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9-130A044

MAY 10 1979

Date

Fee $ 100.00

ICC Washington, D. C.

0361 A
RECORDATION NO. ..... Filed 1425
MAY 10 1979 -1 40 PM
INTERSTATE COMMERCE COMMISSION

0361 B
RECORDATION NO. ..... Filed 1425
MAY 10 1979 -1 40 PM
INTERSTATE COMMERCE COMMISSION

0361 C
RECORDATION NO. ..... Filed 1425
MAY 10 1979 -1 40 PM
INTERSTATE COMMERCE COMMISSION

0361 D
RECORDATION NO. ..... Filed 1425
MAY 10 1979 -1 40 PM
INTERSTATE COMMERCE COMMISSION

May 10, 1979

INTERSTATE COMMERCE COMMISSION

Burlington Northern Inc.
Lease Financing No. 2 Dated as of February 1, 1979
9.70% Conditional Sale Indebtedness
Due January 1, 1996
[CS&M Ref.: 2164-082]

Dear Sir:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

New number

1. (a) Conditional Sale Agreement No. 2 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders; and

— A

(b) Agreement and Assignment No. 2 dated as of February 1, 1979, between General Motors Corporation (Electro-Motive Division) and General Electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

— B

2. (a) Lease of Railroad Equipment No. 2 dated as of February 1, 1979, between Burlington Northern Inc. and The Connecticut Bank and Trust Company, as Trustee; and

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Counterpart E T Brown

(b) Assignment of Lease and Agreement No. 2 dated as of February 1, 1979, between The Connecticut Bank and Trust Company, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee:

The Connecticut Bank and Trust Company
One Constitution Plaza
Hartford, Connecticut 06115

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

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

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Owner-Trustee, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of:

101 GMC-EMD 3,000 h.p. Model SD-40-2 diesel-electric-locomotives bearing identifying numbers BN 7161-7166, 7889-7923, 8030-8089, inclusive; and

31 GE 3,000 h.p. Model C30-7 diesel-electric locomotives bearing identifying numbers BN5000-5012 and 5582-5599, inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Burlington Northern Inc.

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Mr. H. G. Homme, Jr.,
Secretary.

Encls.

G

[CS&M Ref. 2164-082]

RECORDATION NO. 10361-B Filed 1425

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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

No. 2

Dated as of February 1, 1979

BETWEEN

BURLINGTON NORTHERN INC.,
as Lessee,

AND

THE CONNECTICUT BANK AND TRUST COMPANY,
not in its individual capacity but solely
as Trustee under a Trust Agreement dated as of
the date hereof,
as Lessor.

LEASE OF RAILROAD EQUIPMENT

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APPENDIX A Units Leased

APPENDIX B Rental Rates

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LEASE OF RAILROAD EQUIPMENT No. 2 dated as of February 1, 1979, between BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee"), and THE CONNECTICUT BANK AND TRUST COMPANY, a Connecticut banking corporation, not in its individual capacity but solely as Trustee (the "Owner-Trustee") under a Trust Agreement No. 2 dated as of the date hereof (the "Trust Agreement") with the parties named in Appendix II to the Participation Agreement hereinafter mentioned (severally an "Owner" and collectively the "Owners").

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement No. 2 dated as of the date hereof (the "Security Documentation") with General Motors Corporation (Electro-Motive Division) and General Electric Company (severally the "Builder" and collectively the "Builders") wherein the Builders have agreed to manufacture, sell and deliver to the Owner-Trustee the units of railroad equipment described in Appendix A hereto;

WHEREAS each Builder is assigning its interests in the Security Documentation pursuant to an Agreement and Assignment No. 2 dated the date hereof (the "CSA Assignment") to Mercantile-Safe Deposit and Trust Company, acting as agent for a certain investor under a Participation Agreement No. 2 dated as of the date hereof (the "Participation Agreement") among said agent, the Lessee, the Owner-Trustee, the Owners and the investor named in Appendix I thereto (the "Investor") (said agent as so acting, being hereinafter, together with its successors and assigns, called the "Vendor");

WHEREAS the Lessee desires to lease such number of units of the railroad equipment as are delivered and accepted and settled for under the Security Documentation (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS the Owner-Trustee will assign certain of its rights under this Lease for security to the Vendor pursuant to an Assignment of Lease and Agreement No. 2 (the "Lease Assignment") dated as of the date hereof and the Lessee will acknowledge and consent thereto pursuant to the Consent and Agreement No. 2 (the "Consent") in the form attached to the Lease Assignment;

WHEREAS the Owners will agree with the Lessee pursuant to a Funding Agreement No. 2 dated as of the date hereof (the "Funding Agreement"), between the Lessee and each Owner, to make certain payments in respect of interest on the Conditional Sale Indebtedness;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner-Trustee hereby leases the Units to the Lessee upon the following terms and conditions:

§1. NET LEASE

This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, the Lessee shall not be entitled to any abatement of rent, reduction thereof, recoupment or setoff against rent or such other amounts, including, but not limited to, abatements, reductions, recoupments or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner-Trustee or the Owners under this Lease or the Security Documentation including the Lessee's rights by subrogation thereunder to the Builders or the Vendor or otherwise (except as provided in §3.1(6) hereof); nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Owner-Trustee 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 of or any 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 provi-

sions 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 Owner-Trustee, the Owners or the Vendor for any reason whatsoever.

§2. DELIVERY

2.1. *Delivery and Acceptance of Units.* The Owner-Trustee hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Security Documentation. Each delivery of a Unit to the Owner-Trustee under the Security Documentation shall be deemed to be a delivery hereunder to the Lessee at the point or points within the United States of America at which such Unit is so delivered to the Owner-Trustee. Upon such delivery, the Lessee will cause an employee of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit on behalf of the Owner-Trustee under the Security Documentation and on behalf of itself hereunder and execute and deliver to the Owner-Trustee a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Article 3 of the Security Documentation, stating that such Unit has been inspected and accepted on behalf of the Lessee and the Owner-Trustee on the date of such Certificate of Acceptance and is marked in accordance with §5.1 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§3. RENTALS

3.1. *Amount and Date of Payment.* (1) As rental for each Unit subject to this Lease, the Lessee agrees to pay the Owner-Trustee (i) 15 consecutive annual payments payable, in arrears, on July 1 in each year, commencing July 1, 1981, to and including July 1, 1995, and (ii) one semiannual payment payable, in arrears, on January 1, 1996. The 15 annual rental payments and the one semiannual payment shall each be in an amount equal to the basic lease rate set forth in Appendix B-1 hereto for the applicable payment date multiplied by the Purchase Price (as defined in Paragraph 4.1 of the Security Documentation) of each Unit.

(2) The basic lease rates set forth in Appendix B-1 hereto have been calculated on the assumption that the Units will have been settled for on the dates and in the amounts as follows:

Assumed Settlement Date	Assumed Settlement Amount
July 25, 1979	$ 2,785,440
August 20, 1979	5,570,880
September 13, 1979	9,052,680
October 10, 1979	4,178,160
November 20, 1979	15,424,086
December 20, 1979	8,356,320

If for any reason any Units are settled for on any dates other than the Assumed Settlement Dates or in amounts other than the Assumed Settlement Amounts set forth above, then such basic lease rates (and the related Casualty Values set forth in Appendix C hereto) payable by the Lessee hereunder in respect of the Units from and after July 1, 1981 shall be increased or decreased, as the case may be, by such amount as shall, in the reasonable opinion of the Owners, cause the Owners' after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Owners in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows ("Net Economic Return") that would have been realized by the Owners if all Units had been settled for on the Assumed Settlement Dates in the Assumed Settlement Amounts. The Owner-Trustee shall provide a schedule of such rentals and Casualty Values to the Lessee and the Vendor promptly after the facts have been determined and the calculations have been made.

(3) In the event that any dispute should arise as to the calculation of such rentals and Casualty Values under §3.1(2), the Lessee agrees, pending resolution of such dispute, to pay on account of such rentals (or such Casualty Values), on the dates due hereunder, amounts at least equal to the principal and/or interest payable on each such date under paragraphs 4.3(b) and 4.4 of the Security Documentation, but no such payment shall, as between the Owner-Trustee and the Lessee, prejudice the right of the Owner-Trustee to receive from the Lessee any amount in addition thereto, due and payable hereunder.

(4) If and to the extent that the Vendor shall not, pursuant to the Funding Agreement, receive the funds due thereunder on January 1 in each year commencing January 1, 1981, to and including January 1, 1995, the Lessee agrees to pay to the Owner-Trustee, as additional rental for each Unit subject to this Lease, on each such date an amount equal to the applicable basic lease rate therefor set forth in Appendix B-2 hereto for such date multiplied by the Purchase Price of each such Unit, and the Lessee shall be entitled to an offset against the next following July 1 rental payment or payments (to the extent such payments are not required to satisfy the payment of principal and interest on the Conditional Sale Indebtedness) of an amount equal to the amount so paid by the Lessee plus interest thereon for six months at the rate of 9.70% per annum.

(5) Anything in the foregoing provisions of this §3.1 to the contrary notwithstanding, it is agreed that the aggregate of the rentals payable pursuant to this §3.1 on each rental payment date shall in no event be less than the principal and interest payment due on each such date (and the interest payment due on the January 1 interest payment date next preceding such rental payment date) pursuant to paragraphs 4.3(b) and 4.4 of the Security Documentation.

3.2. *Payments on Nonbusiness Days.* If any of the rental payment dates referred to in §3.1 is not a business day the rental payment otherwise payable on such date shall be payable on the next business day, and no interest shall be payable thereon for the period from and after the scheduled date for payment thereof to such next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Hartford, Connecticut or Baltimore, Maryland, are authorized or obligated to remain closed.

3.3. *Instructions To Pay Vendor and Owner-Trustee.* If the Lease Assignment is executed and delivered, until the Vendor shall have advised the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully satisfied and discharged, the Owner-Trustee irrevocably instructs the Lessee to make all the payments provided for in this Lease to the Vendor, for the account of the Owner-Trustee, in care of the Vendor, with instructions to the Vendor (a) first to apply such payments to satisfy the obligations of the Owner-Trustee under the Security Documentation known to the Vendor to be due and payable on the date such payments are due and payable hereunder and (b) second, so long as no event of default under the Security Documentation shall have occurred and be continuing, to pay any balance promptly to the Owner-Trustee or to the order of the Owner-Trustee in immediately available funds at such place as the Owner-Trustee shall specify in writing. If the Lease Assignment is not executed and delivered, or if the Lessee shall have been advised by the Vendor in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied, the installments of rental due hereunder and any Casualty Payments thereafter due pursuant to §7 hereof shall be made to the Owner-Trustee in immediately available funds in the manner provided in §3.4 hereof.

3.4. *Payment in Immediately Available Funds.* The Lessee agrees to make each payment provided for herein as contemplated by §3.1 in immediately available funds at or prior to 11:00 a.m. in the city where such payment is to be made.

§4. TERM OF LEASE

4.1. *Beginning and Termination; Survival.* The term of this Lease as to each Unit shall begin on the date of delivery of such Unit under the Security Documentation and, subject to the provisions of §§7, 13 and 16 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to §3.1 hereof. The obligations of the Lessee hereunder (including, but not limited to, the obligations under §§6, 7, 10, 11, 12, 14, 17 and 19 hereof) shall survive the expiration of the term of this Lease.

4.2. *Rights and Obligations of Lessee Subject to Security Documentation.* Notwithstanding anything to the contrary contained herein, all rights and obligations of the Lessee under this Lease and in and to the Units are subject to the rights of the Vendor under the Security Documentation. If an event of default should occur under the Security Documentation, the Vendor may terminate this Lease without affecting the indemnities which by the provisions of this Lease survive the termination of its term (or rescind its termination), all as provided therein; *provided, however,* that so long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, this Lease may not be terminated and the Lessee shall be entitled to the rights of possession, use and assignment provided under §15 hereof.

§5. IDENTIFICATION MARKS

5.1. *Identifying Numbers; Legend; Changes.* The Lessee will cause each Unit to be kept numbered with the road number set forth in Appendix A hereto, or in the case of any Unit not there listed such road number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed with the Interstate Commerce Commission", or other appropriate words designated by the Owner-Trustee, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner-Trustee's and Vendor's title to and property in such Unit and the rights of the Owner-Trustee under this Lease and of the rights of the Vendor under the Security Documentation. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, obliterated, defaced or destroyed. The Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Owner-Trustee and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documentation shall have been filed, recorded and deposited and (ii) the Lessee shall have furnished the Vendor and the Owner-Trustee an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Vendor's and the Owner-Trustee's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is necessary to protect the interests of the Vendor and the Owner-Trustee in such Units.

5.2. *Insignia of Lessee.* The Units may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates, but the Lessee will not allow the name of any other person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. TAXES

6.1. *Indemnification for Nonincome Taxes.* Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Owner-Trustee

(both in its individual and fiduciary capacities) and the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to, any Unit or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the indebtedness with respect thereto; the rentals, receipts or earnings arising therefrom; or this Lease, the Trust Agreement, the Participation Agreement, the Security Documentation, the CSA Assignment, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to property held in trust by the Owner-Trustee under the Trust Agreement (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); *excluding, however:* (i) Taxes of the United States or of any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes or is indemnified by the Lessee pursuant to the Indemnity Agreement) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner-Trustee (in its individual capacity), the Owners or the Vendor or franchise taxes to the extent measured by gross receipts or net income based on gross receipts of the Owner-Trustee or the Vendor, or gross receipts taxes other than gross receipts taxes in the nature of sales or use taxes, and other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by an Owner or any transfer or disposition by such Owner resulting from bankruptcy or other proceedings for the relief of debtors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease; (iii) any Taxes imposed on or measured by any fees or compensation received by the Owner-Trustee or the Vendor; and (iv) Taxes which are imposed on or measured solely by the net income of the Owner-Trustee or the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Lessee has not agreed to pay or indemnify against pursuant to this §6.1; *provided, however,* that the Lessee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in §6.2 hereof. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee under the laws of the United States or of any state or political subdivision thereof, or of any foreign country or subdivision thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; *provided, however,* that the Lessee shall not be required to pay any such tax during the period it may be contesting the same.

6.2. *Claims; Contests; Refunds.* If claim is made against the Owner-Trustee or the Vendor for any Taxes indemnified against under this §6, such party shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner-Trustee or the Vendor, or as the case may be, shall, upon receipt of any indemnity satisfactory to it for all its reasonable charges for its services rendered in connection therewith and for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner-Trustee or the Vendor; provided that, no proceeding

or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Owner-Trustee or the Vendor in any such proceeding or action) if in the opinion of the Owner-Trustee or the Vendor such contest or the nonpayment of the Taxes would adversely affect the title, property or rights of the Owner-Trustee hereunder or of the Vendor under the Security Documentation. The Lessee agrees to give the Owner-Trustee and the Vendor reasonable notice of such contest prior to the commencement thereof. If the Owner-Trustee or the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or an amount representing interest thereon, the Owner-Trustee or the Vendor, as the case may be, shall pay the Lessee the amount of such refund or interest net of expenses; *provided, however,* that no Event of Default and no event which with notice or lapse of time or both would constitute an Event of Default shall have occurred and be continuing.

6.3. *Reports or Returns.* In case any report or return is required to be made with respect to any obligation of the Lessee under or arising out of this §6 (except obligations resulting from the last sentence of §6.1), the Lessee will, where permitted to do so under applicable rules and regulations, make and timely file such reports and returns in such manner as to show the interest of the Owner-Trustee and the Vendor in the Units as shall be satisfactory to the Owner-Trustee and the Vendor or, where not so permitted, will notify the Owner-Trustee, the Vendor and the Owners of such requirement and will prepare and deliver such reports to the Owner-Trustee and the Vendor within a reasonable time prior to the time such reports are to be filed. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

6.4. *Survival.* All the obligations of the Lessee under this §6 shall survive and continue, but only with respect to periods included in the term of this Lease, notwithstanding payment in full of all amounts due under the Security Documentation or the termination of this Lease. Payments due from the Lessee to the Owner-Trustee or the Vendor under this §6 shall be made directly to the party indemnified.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE

7.1. *Definitions of Casualty Occurrence; Payments.* In the event that any Unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever during the term of this Lease or any renewal term hereof or until such Unit is returned pursuant to §§14 or 17 hereof, or the Purchase Price of any Unit shall have been refunded by the Builder of such Unit pursuant to the terms of its patent indemnity therefor or any Unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of this Lease or during any renewal term hereof (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully notify the Owner-Trustee and the Vendor with respect thereto. On the next succeeding first day of a month occurring at least ten days after such notice from the Lessee has been received or, at the option of the Lessee, on the next succeeding January 1 or July 1 (each such date being hereinafter called a "Casualty Payment Date"), the Lessee shall pay to the Owner-Trustee a sum equal to the Casualty Value (as hereinafter defined) of any such Unit as of such Casualty Payment Date, plus in the case of any Casualty Payment Date coinciding with January 1 or July 1, the rental, if any, in respect of such Unit payable by the Lessee as of such date; *provided, however,* that in the event of a Casualty Occurrence during the period any Unit is required to be returned pursuant to §14 or §17 hereof and the 10 days prior thereto, the Lessee shall make such payment of the Casualty Value to the Owner-Trustee on a date 30 days after such Casualty Occurrence. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft, complete destruction or return to the Builder of such Unit) the Owner-Trustee shall be entitled to recover possession of such Unit.

In addition to the occurrences constituting a Casualty Occurrence under the preceding paragraph, if any Unit shall have been taken or requisitioned by the United States Government or any other governmental entity and such taking or requisition shall not theretofore constitute a Casualty Occurrence as aforesaid, such taking or requisition shall be deemed a Casualty Occurrence if the same shall be continuing at the end of the term of this Lease, in which event the Lessee shall promptly and fully notify the Owner-Trustee with respect thereto and pay the Owner-Trustee, as the Casualty Value therefor, an amount equal to 26% of the Purchase Price of such Unit in the case of the end of the original term of this Lease. Following such payment, the Lessee shall be entitled to receive condemnation payments in respect of such Unit up to an amount equal to such Casualty Value and any balance of such payments shall be the property of the Owner-Trustee. In the event such Unit shall be returned by the governmental entity prior to the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, then the Lessee shall dispose of such Unit as agent for the Owner-Trustee, and shall retain the proceeds of such disposition to the extent that the aggregate of the amounts so retained and the condemnation payments theretofore received by the Lessee shall equal such Casualty Value, and the balance of such proceeds shall be promptly paid to the Owner-Trustee. In the event such Unit shall be returned by the governmental entity following the time the Lessee shall have been reimbursed by such application of condemnation payments in an amount equal to such Casualty Value, such Unit shall be returned by the Lessee to the Owner-Trustee in the manner provided in §17 hereof.

7.2. *Requisition by United States Government.* In the event of the requisition for use by the United States Government of any Unit for a period which does not exceed the term of this Lease or for an indefinite period (except where deemed a Casualty Occurrence pursuant to the last paragraph of §7.1 hereof), all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred. All payments received by the Owner-Trustee or the Lessee from the United States Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, the Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing.

7.3. *Lessee Agent for Disposal.* The Owner-Trustee hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof before and after expiration of this Lease, at the best price obtainable under the circumstances on an "as is, where is" basis. Provided that the Lessee has previously paid the Casualty Value to the Owner-Trustee (i) the Lessee shall be entitled to the net proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner-Trustee and (ii) the Lessee shall be entitled to credit against the Casualty Value payable in respect of any Unit returned to a Builder pursuant to the patent indemnity provisions of the Security Documentation an amount equal to any payment made by such Builder to the Owner-Trustee in respect thereof under the Security Documentation.

7.4. *Payments After Expiration of Lease.* If the date upon which the making of the payment by the Lessee in §7.1 hereof in respect of any Unit is required as aforesaid shall be after the term of this Lease or any renewal term thereof in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term.

7.5. *Amount of Casualty Value.* The Casualty Value of each Unit as of the Casualty Payment Date on which payment is made shall be:

(a) if the Casualty Payment Date coincides with any January 1 or July 1 on or after July 1, 1980, an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Appendix C hereto opposite such Casualty Payment Date, or

(b) if the Casualty Payment Date is a date other than any January 1 or July 1 after July 1, 1980, the Casualty Value shall be an amount equal to (i) that percentage of the Purchase Price of

such Unit as is set forth opposite the date which coincides with the next preceding January 1 or July 1 (or, in case the Casualty Payment Date is prior to July 1, 1980, then July 1, 1980) in Appendix C hereto (the "Rental Casualty Payment Date") plus (ii) 0.994% of the amount described in clause (i) hereof for each month or a portion of a month elapsed from and including such Rental Casualty Payment Date to the Casualty Payment Date upon which payment is to be made,

plus, on any Casualty Payment Date with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Unit an amount equal to the percentage of the Purchase Price of such Unit suffering a Casualty Occurrence set forth below:

Anniversary of the date of the Certificate of Acceptance	Percentage of Purchase Price to be added
Third	19.23%
Fifth	12.82%
Seventh	6.41%

7.6. *No Release.* 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 from and after delivery and acceptance thereof by the Lessee hereunder.

7.7. *Insurance To Be Maintained.* (1) The Lessee will, at all times prior to the return of the Units to the Owner-Trustee at its own expense, cause to be carried and maintained (i) property insurance in respect of the Units at the time subject hereto; *provided, however,* that the Lessee may self-insure such Units to the extent it self-insures equipment similar to the Units and to the extent such self-insurance is consistent with prudent industry practice, and (ii) public liability insurance with respect to third party personal and property damage and the Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least, not less comprehensive in amounts and against risks customarily insured against by the Lessee in respect of equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owner-Trustee. The proceeds of any property insurance shall be payable to the Vendor, the Owner-Trustee and the Lessee, as their interests may appear, so long as the indebtedness, if any, evidenced by the Security Documentation shall not have been paid in full, and thereafter to the Owner-Trustee and the Lessee as their interests may appear. Any policies of insurance carried in accordance with this paragraph shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner-Trustee and the Vendor and (ii) name the Owner-Trustee, the Owners and the Vendor as additional named insureds and loss payees as their respective interests may appear and in the event such policies shall contain breach of warranty provisions such policies shall provide that in respect of the interests of the Owner-Trustee, the Owners and the Vendor in such policies the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than the Owner-Trustee and the Vendor, respectively) and shall insure the Owner-Trustee, each Owner and the Vendor regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person (other than the Owner-Trustee or the Vendor, respectively). Prior to the first date of delivery of any Unit pursuant to the Security Documentation, and thereafter not less than 15 days prior to the expiration dates of the expiring policies theretofore delivered pursuant to this §7, the Lessee shall deliver to the Owner-Trustee and the Vendor a duplicate original of all policies (or in the case of blanket policies, certificates thereof issued by the insurers thereunder) for the insurance maintained pursuant to this §7; *provided, however,* that if the delivery of a formal policy or certificate, as the case may be, is delayed, the Lessee shall

deliver an executed binder with respect thereto and shall deliver the formal policy or certificate, as the case may be, upon receipt thereof.

(2) In the event that the Lessee shall fail to maintain insurance as herein provided, the Owner-Trustee may at its option provide such insurance (giving the Lessee prompt written notice thereof) and, in such event, the Lessee shall, upon demand from time to time, reimburse the Owner-Trustee for the cost thereof together with interest, on the amount of the cost to the Owner-Trustee of such insurance which the Lessee shall have failed to maintain, at the rate per annum specified in §19 hereof.

7.8. *Insurance Proceeds and Condemnation Payments.* If the Owner-Trustee shall receive (directly or from the Vendor) any insurance proceeds or condemnation payments in respect of such Units suffering a Casualty Occurrence, the Owner-Trustee shall pay such proceeds or condemnation payments 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 or condemnation payments shall remain the property of the Owner-Trustee; *provided, however,* that no Event of Default shall have occurred and be continuing and the Lessee shall have made payment of the Casualty Value thereof, and accrued rentals in respect of such Units, to the Owner-Trustee. All insurance proceeds received by the Owner-Trustee (directly or from the Vendor) in respect of any Unit not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Owner-Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

§8. REPORTS

On or before May 31 in each year, commencing with the calendar year 1980, the Lessee will furnish to the Owner-Trustee and the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all Units then leased hereunder and covered by the Security Documentation, the total number, description and road numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner-Trustee or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5.1 hereof have been preserved or replaced. The Owner-Trustee, the Vendor and the Owners shall each have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner-Trustee, the Vendor or the Owners may request during the continuance of this Lease.

§9. DISCLAIMER OF WARRANTIES

THE OWNER-TRUSTEE DOES NOT MAKE, HAS NOT MADE AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER-TRUSTEE DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE, it being agreed that all such risks, as between the Owner-Trustee and the Lessee, are to be borne by the Lessee; but the Owner-Trustee hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner-Trustee and/or the Lessee, as

their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner-Trustee may have against the Builders under the provisions of Items 3 and 4 of Annex A of the Security Documentation; *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Owner-Trustee may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Owner-Trustee shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Lessee and the Owner-Trustee that the Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Owner-Trustee or the Vendor based on any of the foregoing matters.

§10. LAWS AND RULES

10.1. *Compliance.* The Lessee agrees, for the benefit of the Owner-Trustee and the Vendor, to comply in all respects (including without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Lessee will conform therewith at its own expense; *provided, however,* that the Lessee may at its own expense, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner-Trustee or the Vendor, adversely affect the property or rights of the Owner-Trustee or the Vendor under this Lease or under the Security Documentation.

10.2. *Reports by Owner-Trustee.* The Lessee agrees to prepare and deliver to the Owner-Trustee and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner-Trustee and the Vendor) any and all reports (other than income tax returns) to be filed by the Owner-Trustee with any Federal, state or other regulatory authority by reason of the ownership by the Owner-Trustee or the Vendor of the Units or the leasing thereof to the Lessee.

§11. MAINTENANCE

11.1. *Units in Good Operating Order.* The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit and considered an accession thereto as hereinbelow provided) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted.

11.2. *Additions and Accessions.* (1) Except as set forth in §§10.1 and 11.1 hereof, the Lessee, at its own cost and expense, may from time to time make such other additions, modifications and improvements to the Units during the term of this Lease as are readily removable without causing material damage to the Units and do not adversely and materially affect the value of the Units. The additions, modifications and improvements made by the Lessee under the preceding sentence shall be owned by the Lessee, except to the extent such additions, modifications or improvements are made in order to comply with §11.2(2) hereof.

(2) Any and all parts installed on and additions and replacements made to any Unit (i) which are not readily removable without causing material damage to such Unit and were installed or were added to such Unit in contravention of its agreements contained in §11.2(1) hereof, or (ii) the cost of which is included in the Purchase Price of such Unit, or (iii) in the course of ordinary maintenance of the Units or (iv) which are required for the operation or use of such Unit by the interchange rules of the Association of American Railroads or by the regulations of the Department of Transportation, the Interstate Commerce Commission or any other applicable regulatory body, shall constitute accessions to such Unit and full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documentation and the CSA Assignment) shall immediately be vested in the Owner-Trustee.

§12. INDEMNIFICATION

12.1. *Indemnified Persons.* The Lessee shall pay, and shall protect, indemnify and hold the Owner-Trustee (in both its individual and fiduciary capacities), the Vendor and any assignee thereof, and their respective successors, assigns, agents and servants (hereinafter called "Indemnified Persons"), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Lease, the Security Documentation or the Units, including without limitation, those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, non-delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee, the Vendor or the Lessee, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Lease (except by the Owner-Trustee) or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of any of the Owner-Trustee's obligations under the Lease Assignment or the Vendor's retention of a security interest under the Security Documentation or the Lease Assignment or the Participation Agreement (except to the extent such claim arises from an act or omission of the Owner-Trustee, the Vendor or any assignee of the Vendor, respectively). The Lessee shall be obligated under this §12.1, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §12.1 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person and, in the event of any failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §12, the Lessee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of

any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. The Lessee and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this §12 by the Lessee, and provided that no Event of Default (or other event which with lapse of time or notice or both would constitute an Event of Default) shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person (except against another Indemnified Person) in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §12.1 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made. Nothing in this §12.1 shall constitute a guarantee by the Lessee of the Conditional Sale Indebtedness of the Owner-Trustee under the Conditional Sale Agreement or a guarantee of the residual value of any Unit.

12.2. *Indemnification of Builders.* The Lessee further agrees to indemnify, protect and hold harmless each Builder as a third party beneficiary hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against such Builder because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by such Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. The Lessee will give notice to such Builder of any claim known to the Lessee from which liability may be charged against such Builder hereunder.

12.3. *Survival.* The indemnities contained in this §12 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §12 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

§13. DEFAULT

13.1. *Events of Default; Remedies.* If, during the continuance of this Lease or any extension or renewal thereof, one or more of the following events (each such event being herein sometimes called an Event of Default) shall occur:

A. default shall be made in payment of any amount provided for in §§3, 7 or 16 hereof, and such default shall continue for 10 days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to 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 Participation Agreement or the Indemnity Agreement and such default shall continue for 30 days after written notice from the Owner-Trustee or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. any representation or warranty made by the Lessee herein or in the Participation Agreement or in any certificate or statement furnished to the Owner-Trustee or any Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof;

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, or under any other provision of Title 11 of the United States Code, as now constituted or as hereafter 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 this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) 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, or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended;

F. any other 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 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), 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 shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) 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 proceedings shall have been commenced, whichever shall be earlier; or

G. an event of default set forth in Article 16 of the Security Documentation shall have occurred arising out of any default by the Lessee in performing any of its obligations hereunder;

then, in any such case, the Owner-Trustee, at its option, may:

(a) proceed by appropriate court action, 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 herein provided; and thereupon the Owner-Trustee may by its agents enter upon the premises of the Lessee or other premises, insofar as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, 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 Owner-Trustee 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 as damages for loss of the bargain and not as a penalty whichever of the following amounts that the Owner-Trustee, in its sole discretion shall specify, (i) a sum, with respect to each Unit, which represents (x) the excess of the present value, at the time of such termination, of the entire unpaid balance of all rentals 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, such present value to be computed on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rental would have been payable hereunder had this Lease not been terminated over the then present value of the rental which the Owner-Trustee reasonably estimates to be obtainable for each Unit during such period, such present value to be computed on the 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 or, if such Unit is sold, the net proceeds of the sale plus (y) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental or (ii) an amount equal to the excess, if any, of the Casualty Value as of the Casualty Payment Date on or next preceding the date of termination over the amount the Owner-Trustee reasonably estimates to be the sales value of such Unit at such time; *provided, however,* that in the event the Owner-Trustee shall have sold any unit, the Owner-Trustee, in lieu of collecting any amounts payable by the Lessee pursuant to the preceding clause (ii) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner-Trustee and the Lessee shall pay to the Owner-Trustee on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the Casualty Payment Date on or next preceding the date of termination over the net proceeds of such sale.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner-Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

13.2. *Remedies Not Exclusive; Waiver.* The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, 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 not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset and/or recoupment against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

13.3. *Failure To Exercise Rights Is Not Waiver.* The failure of the Owner-Trustee 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.

13.4. *Notice of Event of Default.* The Lessee also agrees to furnish the Owner-Trustee, each Owner and the Vendor, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this §13.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§14. RETURN OF UNITS UPON DEFAULT

14.1. *Return of Units.* If this Lease shall terminate pursuant to §13 hereof or pursuant to Article 16 of the Security Documentation, the Lessee shall forthwith deliver possession of the Units to the

Owner-Trustee. Each Unit so delivered shall be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, shall meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and shall have attached or affixed thereto any special device considered an accession thereto as provided in §11 and shall have removed therefrom at the Lessee's expense any addition, modification or improvement which, as provided in §11, is owned by the Lessee. For the purpose of delivering possession of any Unit or Units as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of the Lessee or any of its affiliates as the Owner-Trustee reasonably may designate;

(b) permit the Owner-Trustee to store such Units on such tracks at the risk of the Lessee without charge for insurance, rent or storage until all such Units have been sold, leased or otherwise disposed of by the Owner-Trustee; and

(c) transport the same to any place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Owner-Trustee.

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store, insure and transport the Units. During any storage period, the Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to the Owner-Trustee and, if received by the Lessee, shall be promptly turned over to the Owner-Trustee.

14.2. *Owner-Trustee Appointed Agent of Lessee.* Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §14, the Lessee hereby irrevocably appoints the Owner-Trustee as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner-Trustee, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§15. ASSIGNMENT, POSSESSION AND USE

15.1. *Assignment; Consent.* This Lease shall be assignable in whole or in part by the Owner-Trustee to any successor Owner-Trustee which may be appointed pursuant to Article VII of the Trust Agreement or to any banking or financial institution which has a combined capital and surplus of at least $50,000,000 and which has no interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee hereby consents to the assignment of this Lease pursuant to the Lease Assignment.

15.2. *Lessee's Rights To Use the Units, To Permit Use Thereof by Others and To Sublease the Units.* (1) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documentation. Without the prior

written consent of the Owner-Trustee and the Vendor, the Lessee shall not assign or transfer its leasehold interest under this Lease in any of the Units or sublease any of the Units, except as provided in paragraph (2) below of this §15.2; and the Lessee shall not, without the prior written consent of the Owner-Trustee and the Vendor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of paragraph (2) of this §15.2. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Owner-Trustee or the Vendor or resulting from claims against the Owner-Trustee or the Vendor not related to the ownership of the Units or any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interests of the Owner-Trustee and the Vendor) upon or with respect to any Unit, including any accession thereto, or the interest of the Owner-Trustee, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises.

(2) So long as (i) no Event of Default exists hereunder, (ii) the Lessee is complying with the provisions of the Consent and (iii) the Vendor is entitled to apply the Payments as defined in the Lease Assignment in accordance with the Lease Assignment, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract and shall be entitled to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements and to assign its rights to the Units or to sublease the Units to any of its affiliates, but only upon and subject to all the terms and conditions of this Lease and the Security Documentation; *provided, however,* that the Lessee shall not assign, sublease or permit the assignment, sublease or use of any Unit predominantly outside the United States of America within the meaning of Section 48(a) of the Internal Revenue Code of 1954, as amended to the date hereof, nor shall the Lessee assign or sublease to, or permit the sublease or use of the Units by, any person in whose hands such Units would not qualify as "section 38 property" within the meaning of said Code. The Lessee may receive and retain compensation for the use of any of the Units from other railroads so using such Units. Any sublease permitted by this paragraph may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; *provided, however,* that every such sublease shall be subject and subordinate to the rights and remedies of the Vendor under the Security Documentation and the Owner-Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an event of default or Event of Default thereunder or hereunder.

15.3. *Transfers by Lessee Through Merger, Acquisition or Consolidation.* Nothing in this §15 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, the Consent, the Participation Agreement and the Indemnity Agreements.

§16. RENEWAL OPTIONS AND LIMITED RIGHT TO PURCHASE

16.1. *Renewal for Successive Periods.* 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 Owner-

Trustee not less than 180 days prior to the end of the original term, the first extended term or the second extended term of this Lease, elect to extend such original or extended term of this Lease, as the case may be, in respect of all but not less than all the Units then covered by this Lease or the then extended term, as the case may be, for an additional two-year period commencing on the scheduled expiration of such original term or then extended term, as the case may be, of this Lease. The rental payable during each extended term shall be payable semiannually in arrears on January 1 and July 1 of each year of such extended term and shall be in an amount equal to the "Fair Market Rental".

16.2. *Determination of Fair Market Rental.* (1) Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental and it shall be assumed that all the Units have been assembled in one place on the lines of the Lessee.

(2) If, after 50 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease for any extended term, the Owner-Trustee and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 days after such notice is given, each party shall appoint an independent appraiser within 25 days after such notice is given, and the two appraisers so appointed shall within 35 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

16.3. *Limited Right to Purchase.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, in the event the Owner-Trustee elects to sell any Units to third parties at the expiration of the original term of this Lease, the Lessee shall be given written notice of such intention prior to the expiration of such term. In the event that the Owner-Trustee shall receive, prior to 90 days after the end of such term of the Lease, a bona fide offer in writing from another party unrelated to the Lessee to purchase the Units and the Owner-Trustee elects to sell the Units pursuant to such offer at the expiration of such term of this Lease, the Owner-Trustee shall give written notice to the Lessee of such offer. Such notice shall include the price and the terms and conditions of payment offered by the other party in writing to the Owner-Trustee. The Lessee shall have the sole right and option to purchase the Units for cash at the price at which the Units are proposed to be sold or under the other terms and conditions of payment offered by the other party, as hereinafter provided. Within 10 business days of receipt of notice from the Owner-Trustee, the Lessee

shall exercise such purchase right by delivery to the Owner-Trustee of a written notice specifying a date of purchase, which date shall not be later than the later of (i) 15 days after the date of delivery of such notice by the Lessee to the Owner-Trustee or (ii) 90 days after the expiration of such term of this Lease. In the event that the Lessee shall have delivered a notice of its election to purchase the Units, this Lease (including the obligation to pay rent) shall be further extended upon the same terms and conditions set forth herein from the date such notice is delivered to the Owner-Trustee until the date of such purchase.

§17. RETURN OF UNITS UPON EXPIRATION OF TERM

As soon as practicable on or after the expiration of the original or extended term of this Lease with respect to any Unit and in any event not later than 30 days thereafter, the Lessee will, at its own cost and expense, at the request of the Owner-Trustee, deliver possession of such Unit to the Owner-Trustee upon such storage tracks of the Lessee as the Owner-Trustee may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Owner-Trustee to store such Unit on such tracks for a period not exceeding 150 days and transport the same upon disposition of the Units, at any time within such period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Owner-Trustee, the movement and storage of such Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Owner-Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; *provided, however,* that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner-Trustee or any prospective purchaser or user, the rights of inspection granted under this sentence. Each Unit returned to the Owner-Trustee pursuant to this §17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads and/or the applicable rules of any governmental agency or other organization with jurisdiction and (iii) have attached or affixed thereto any special device considered an accession thereto as provided in §11 hereof and have removed therefrom any such device not so considered an accession. During any such storage period the Lessee shall maintain the Units in such manner as the Lessee normally maintains similar units of railroad equipment owned or leased by it in similar storage circumstances. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner-Trustee shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units.

§18. RECORDING

The Lessee, at its own expense, will cause this Lease, the Security Documentation, the CSA Assignment and the Lease Assignment to be filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in *The Canada Gazette*) pursuant to Section 86 of the Railway Act of Canada. The Lessee will undertake the filing, registering, deposit and recording required of the Owner-Trustee under the Security Documentation. The Lessee in addition will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner-Trustee or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Owner-Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documentation, the CSA Assignment and the Lease Assignment; and the Lessee will promptly furnish

to the Vendor and the Owner-Trustee evidence of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Owner-Trustee; *provided, however,* that no such opinion of counsel need be furnished in respect of the filing of the Security Documentation or the CSA Assignment in Canada. This Lease, the Security Documentation, the CSA Assignment and the Lease Assignment shall be filed and recorded with the Interstate Commerce Commission and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision will have been made for publication of notice of such deposit in *The Canada Gazette* prior to the delivery and acceptance hereunder of any Unit.

§19. 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 interest at 10.70% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§20. OWNER-TRUSTEE'S RIGHT TO PERFORM FOR THE LESSEE

If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner-Trustee may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner-Trustee incurred in connection with such performance or compliance, together with interest on such amount at the rate per annum which Manufacturers Hanover Trust Company, New York, N. Y., charges for unsecured 90-day loans to large corporate borrowers at the time in effect, shall be payable by the Lessee upon demand except as otherwise provided in this Lease. No such performance or compliance by the Owner-Trustee shall be deemed a waiver of the rights and remedies of the Owner-Trustee or any assignee of the Owner-Trustee against the Lessee hereunder.

§21. NOTICES

Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when mailed, first class, postage prepaid, addressed as follows:

(a) if to the Owner-Trustee, at One Constitution Plaza, Hartford, Connecticut 06115, Attention of Corporate Trust Department, with a copy to each Owner at its address set forth in Appendix II to the Participation Agreement,

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, Attention: Assistant Vice President, Financial Planning and Treasurer,

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

§22. SEVERABILITY

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.

§23. EFFECT AND MODIFICATION OF LEASE

Except for the Participation Agreement, the Indemnity Agreement and the Funding Agreement, this Lease exclusively and completely states the rights of the Owner-Trustee and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. 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 signatories for the Owner-Trustee and the Lessee.

§24. THIRD PARTY BENEFICIARIES

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the Owners, the Vendor and the permitted successors and assigns of a party, and, as to §12.2 hereof, the Builders) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

§25. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor pursuant to the Lease Assignment shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, 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.

§26. 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 49 U.S.C. §11303 and Section 86 of the Railway Act of Canada.

§27. IMMUNITIES; NO RECOURSE

(1) No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Lease.

(2) Anything herein to the contrary notwithstanding, each and all of the representations, warranties and agreements herein made on the part of the financial institution acting as Owner-Trustee are each and every one of them made and intended not as personal representations, warranties and agreements by said financial institution in its individual capacity or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by the Owner-Trustee solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution or the Owners on account of any representation, warranty or agreement hereunder of the Owner-Trustee, either expressed

or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee.

§28. AGREEMENTS FOR BENEFIT OF OWNERS AND OWNERS' AND OWNER-TRUSTEE'S ASSIGNS

All rights of the Owner-Trustee hereunder (including, but not limited to, its rights under §§7, 9, 13, 14 and 17 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Owners and any of the Owners' assigns under the Trust Agreement and the Owner-Trustee's assigns including the Vendor.

§29. TERM OWNER-TRUSTEE

Whenever the term Owner-Trustee is used in this Lease it shall apply and refer to the Owner-Trustee and any assignee of the Owner-Trustee (including, so long as any Conditional Sale Indebtedness under the Security Documentation or interest thereon shall remain unpaid or any other obligation thereunder be continuing, the Vendor).

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

BURLINGTON NORTHERN INC.,

by R C Burlingame
Assistant Vice President,
Financial Planning and Treasurer

[CORPORATE SEAL]

ATTEST:
Assistant Secretary

THE CONNECTICUT BANK AND TRUST COMPANY, as Trustee as aforesaid,

by
Authorized Officer

[SEAL]

ATTEST:
Authorized Officer

STATE OF MINNESOTA,
COUNTY OF RAMSEY, } ss.:

On this 18th day of April, 1979, before me personally appeared R. C. BURTON, JR., to me personally known, who, being by me duly sworn, says that he is the Assistant Vice President, Financial Planning and Treasurer of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

JODY K. THAYER
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires April 2, 1981

Jody K. Thayer
Notary Public

[NOTARIAL SEAL]

My Commission expires April 2, 1981

STATE OF CONNECTICUT,
COUNTY OF HARTFORD, } ss.:

On this 19th day of April, 1979, before me personally appeared E. W. KAWAM, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE CONNECTICUT BANK AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Barbara S. Kacich
Notary Public

[NOTARIAL SEAL]

BARBARA S. KACICH
NOTARY PUBLIC
MY COMMISSION EXPIRES MARCH 31, 1982

My Commission expires

APPENDIX A TO LEASE*

Type	Builder	Builder's Specifications	Builder's Plant	Quantity*	Lessee's* Road Numbers (Both Inclusive)	Estimated† Unit Base Price	Estimated* Total Base Price	Estimated* Time and Place of Delivery
3,000 h.p. Model SD 40-2 diesel-electric locomotive	EMD	8087	La Grange, Illinois	101	BN 7161-7166 7889-7923 8030-8089	$682,414.75	$68,923,890	April through December 1979, at Fridley, Minnesota
3,000 h.p. Model C30-7 diesel-electric locomotive	GE	3390 G	Erie, Pennsylvania	31	BN 5000-5012 5582-5599	$687,608.10	21,315,851	April through December 1979, at Erie, Pennsylvania
				132			$90,239,741	

*This Appendix A sets forth the description of all Units which are scheduled for delivery both under this Lease No. 2 and under Lease No. 1 (as defined in the recitals of the Participation Agreement). It is intended, however, that Lease No. 1 will cover the Units scheduled for delivery on or prior to June 30, 1979, having an estimated total base price of $44,872,175 (consisting of 67 Units, 42 EMD and 25 GE) and that Lease No. 2 will cover the Units scheduled for delivery from July 1, 1979, through December 31, 1979, having an estimated total base price of $45,367,566 (consisting of 65 Units, 59 EMD and 6 GE). If deliveries are not made on schedule, the Lessee may direct that some Units intended for delivery under Lease No. 1 be delivered and accepted under Lease No. 2 to the extent of the funds available under Conditional Sale Agreement No. 2 but not after December 31, 1979; and the Lessee may direct that some Units intended for delivery under Lease No. 2 be delivered and accepted under Lease No. 1 on or prior to December 31, 1979, if funds are not available therefor under Conditional Sale Agreement No. 2, and after December 31, 1979, and on or prior to March 31, 1980, to the extent of available funds under Conditional Sale Agreement No. 1. After delivery of all the Units covered by both Leases, this Appendix A will be appropriately amended to describe only those Units covered by this Lease No. 2.

†The Estimated Unit Base Price includes prepaid freight to Fridley, Minnesota.

APPENDIX B-1 TO LEASE

Schedule A Units

Date	Percentage of Purchase Price*
7/1/81	8.55018
7/1/82	8.55018
7/1/83	8.55018
7/1/84	8.55018
7/1/85	8.55018
7/1/86	8.55018
7/1/87	8.55018
7/1/88	9.50025
7/1/89	10.45022
7/1/90	10.45022
7/1/91	10.45022
7/1/92	10.45022
7/1/93	10.45022
7/1/94	10.45022
7/1/95	10.45022
1/1/96	4.75010

* As defined in paragraph 4.1 of the Security Documentation.

APPENDIX B-2 TO LEASE

Schedule A Units

Date	Percentage of Purchase Price*
1/1/81	3.273751
1/1/82	3.184324
1/1/83	3.086012
1/1/84	2.977932
1/1/85	2.859115
1/1/86	2.728493
1/1/87	2.584893
1/1/88	2.427026
1/1/89	2.207399
1/1/90	1.919876
1/1/91	1.603787
1/1/92	1.256294
1/1/93	1.035578
1/1/94	0.823771
1/1/95	0.601610

* As defined in paragraph 4.1 of the Security Documentation.

APPENDIX C TO LEASE

Schedule A Units

Casualty Payment Dates	Percentage of Purchase Price*
7/1/80	94.54
1/1/81	99.52
7/1/81	95.86
1/1/82	100.34
7/1/82	96.53
1/1/83	101.07
7/1/83	95.92
1/1/84	99.51
7/1/84	94.50
1/1/85	98.19
7/1/85	92.18
1/1/86	94.98
7/1/86	89.18
1/1/87	91.99
7/1/87	85.46
1/1/88	87.74
7/1/88	80.51
1/1/89	82.57
7/1/89	74.17
1/1/90	75.94
7/1/90	67.26
1/1/91	68.87
7/1/91	60.09
1/1/92	61.66
7/1/92	52.87
1/1/93	54.32
7/1/93	45.41
1/1/94	46.72
7/1/94	37.65
1/1/95	38.81
7/1/95	29.58
1/1/96 and thereafter	26.00

*As defined in paragraph 4.1 of the Security Documentation.