RECORDATION NO. ..... Filed & Recorded
MAR 4 - 1977 - 1 55 PM
INTERSTATE COMMERCE COMMISSION

CRAVATH, SWAINE & MOORE

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7083A023
MAR 24 1977
Date
Fee $ 100
ICC Washington, D. C.

I.C.C.
FEE OPERATION BR.

RECORDATION NO. 8759 Filed & Recorded
MAR 24 1977 - 1 55 PM
INTERSTATE COMMERCE COMMISSION

March 24, 1977

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of December 30, 1976, between First Security Bank of Utah, National Association, as Trustee, and each of General Motors Corporation (Electro-Motive Division) and General Electric Company;

(b) Agreement and Assignment dated as of December 30, 1976, between each of General Motors Corporation (Electro-Motive Division), General Electric Company and Mercantile-Safe Deposit and Trust Company, as Agent;

2(a) Lease of Railroad Equipment dated as of December 30, 1976, between Burlington Northern Inc. and First Security Bank of Utah, National Association, as Trustee;

(b) Assignment of Lease and Agreement dated as of December 30, 1976, between First Security Bank of Utah, National Association, as Trustee, and Mercantile-Safe Deposit and Trust Company, as Agent.

RECORDATION NO. 8759-A Filed & Recorded
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RECORDATION NO. 8759-B Filed & Recorded
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RECORDATION NO. 8759-C Filed & Recorded
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INTERSTATE COMMERCE COMMISSION

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

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
Post Office Box 2258
Baltimore, Maryland 21203

(2) Trustee-Owner-Trustee-Lessor:

First Security Bank of Utah,
National Association
79 South Main Street
Salt Lake City, Utah 84111

(3) Builders:

General Motors Corporation
(Electro-Motive Division)
LaGrange, 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-Lessor, the Builder and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Forty Diesel-Electric Locomotives, bearing identifying numbers BN8000-8009, 6773-6780, C&S930-949 and 960-961; and

Twenty Diesel-Electric Locomotives, bearing identifying numbers BN5510-BN5529.

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 two copies of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Dana L. Trier,
As Agent for Burlington Northern Inc.

Robert L. Oswald, Esq.,
Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

Encls.

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ASSIGNMENT OF LEASE AND AGREEMENT dated as of December 30, 1976 (hereinafter called this Assignment), by and between FIRST SECURITY BANK OF UTAH, National Association, acting solely in its capacity as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof with the parties named therein (hereinafter called the Trust Agreement), and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent (hereinafter called the Vendor) under a Participation Agreement dated as of the date hereof.

WHEREAS the Owner-Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documentation) with each of General Motors Corporation (Electro-Motive Division) and General Electric Company (said corporations being hereinafter called collectively the Builders and severally the Builder), providing for the sale to the Owner-Trustee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Owner-Trustee thereunder;

WHEREAS the Owner-Trustee and Burlington Northern Inc. (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), providing for the leasing by the Owner-Trustee to the Lessee of the Units;

WHEREAS, in order to provide security for the obligations of the Owner-Trustee under the Security Documentation and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documentation), the Owner-Trustee agrees to assign for security purposes its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Owner-Trustee hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the obligations of the Owner-Trustee under the Security Documentation, all the Owner-Trustee's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Owner-Trustee from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Owner-Trustee is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Owner-Trustee hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Owner-Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Owner-Trustee is or may become entitled under the Lease and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Owner-Trustee pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Owner-Trustee under the Security Documentation, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to the Owner-Trustee on the same date such Payment is applied to satisfy such obligations of the Owner-Trustee, by check mailed to the Owner-Trustee on such date or, upon written request of the Owner-Trustee, by bank wire to the Owner-Trustee at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Owner-Trustee. If the Vendor shall not receive any rental payment under §3.1 of the Lease when due, the Vendor shall notify the Owner-Trustee and each Owner by registered mail, return receipt requested at the address set forth in the Lease; *provided, however,* that the failure of the Vendor to so notify the Owner-Trustee and each Owner by registered mail, return receipt requested shall not affect the obligations of the Owner-Trustee hereunder or under the Security Documentation.

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INTERSTATE COMMERCE COMMISSION

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Owner-Trustee under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Owner-Trustee to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Owner-Trustee or persons other than the Vendor.

3. The Owner-Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Owner-Trustee; without the written consent of the Vendor, the Owner-Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Owner-Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. The Owner-Trustee does hereby constitute the Vendor the Owner-Trustee's true and lawful attorney, irrevocably, with full power (in the name of the Owner-Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Owner-Trustee is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Vendor may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from the Owner-Trustee under the Security Documentation, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Owner-Trustee. Promptly following such full discharge and satisfaction, the Vendor agrees that it will advise the Lessee in writing that all sums due from the Owner-Trustee under the Security Documentation have been fully discharged and satisfied and instruct the Lessee that no further payments under the Lease are to be made to the Vendor.

6. The Owner-Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interest of the Vendor hereunder.

7. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

8. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Owner-Trustee shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor.

10. The Vendor hereby agrees with the Owner-Trustee that the Vendor will not, so long as no event of default under the Security Documentation has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by the Owner-Trustee to the Vendor by this Assignment and which are for the sole benefit of the Owner-Trustee, without the prior consent of the Owner-Trustee.

11. It is expressly understood and agreed by and between the parties hereto, anything in this Agreement to the contrary notwithstanding, that each and all of the representations, undertakings and agreements in this Agreement made on the part of the Owner-Trustee are each and every one of them made and intended not as personal representations, undertakings and agreements by First Security Bank

of Utah, National Association, or for the purpose or with the intention of binding the said bank 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 Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said bank or the Owners or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners, except as provided in paragraph 13.3 of Article 13 of the Security Documentation and Section 1.04 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for the satisfaction of the same.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY BANK OF UTAH,
National Association, as Trustee as aforesaid,

By .....
Authorized Officer

[Seal]

Attest:

.....
Authorized Officer

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By .....
Assistant Vice President

[Corporate Seal]

Attest:

.....
Corporate Trust Officer

STATE OF UTAH,
COUNTY OF SALT LAKE, } ss.:

On this 14th day of March 1977, before me personally appeared Robert L Clark, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, National Association, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association 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 national banking association.

Lynda B. Eichner
Notary Public

[Notarial Seal]

My Commission expires
Nov 21, 1979

STATE OF MARYLAND,
CITY OF BALTIMORE, } ss.:

On this 18th day of March 1977, before me personally appeared G. J. Johnston, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT 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.

Dorothy E. Schorf
Notary Public

[Notarial Seal]

DOROTHY E. SCHARF
NOTARY PUBLIC
My Commission Expires July 1, 1978

My Commission expires 7-1-78.

CONSENT AND AGREEMENT

The undersigned, BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that so long as said Lease Assignment is effective.

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease directly to Mercantile-Safe Deposit and Trust Company, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, at P. O. Box 2258, Baltimore, Maryland 21203, attention of Corporate Trust Department, (or at such other address as may be furnished in writing to the Lessee by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Vendor were named therein as the Owner-Trustee;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated or modified, nor shall any action be taken or omitted by the Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Minnesota and, for all purposes, shall be construed in accordance with the laws of said State.

BURLINGTON NORTHERN INC.,

By .....

Executive Vice President—
Finance and Administration

[Corporate Seal]

Attest:

.....
Assistant Secretary

The foregoing Consent and Agreement is hereby accepted, as of the 30th day of December 1976.

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By .....

Assistant Vice President

[Corporate Seal]

Attest:

.....
Corporate Trust Officer