

8704

RECORDATION NO. Filed & Recorded

APR 15 1977 - 11 35 AM

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission
Washington, D. C.

Gentlemen:

Enclosed for recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, are the original and 9 counterparts of an Equipment Lease dated as of March 1, 1977.

A general description of the railroad equipment covered by the enclosed document is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

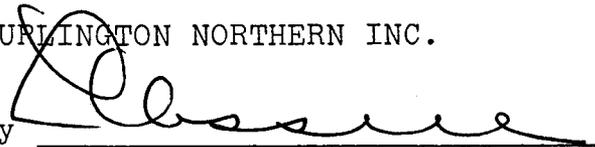
Lessor:	Pacific Systems, Inc. Bank of America Center San Francisco, California 94137
Lessee:	Burlington Northern Inc. Burlington Northern Building 176 East Fifth Street St. Paul, Minnesota 55101

The undersigned is the Lessee mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original and 7 copies of the Equipment Lease to Ronald E. Roden, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Also enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,
BURLINGTON NORTHERN INC.

By 
Its Treasurer

LESSEE AS AFORESAID

7 105AC50

APR 15 1977
50

Enclosures

RECEIVED
APR 15 11 32 AM '77
I.C.C. OPERATION B.R.

R. E. Roden

DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and Number of Reconstructed Items of Equipment:	150 70-ton Rebuilt Open-top Hopper Cars, Marked and Numbered BN 548850 to BN 548999, both inclusive.
Base Purchase Price to Lessor of Original Equipment:	\$4,230 per Item (\$634,000 for 150 Items)
Estimated Reconstruction Cost to Lessor of Equipment:	\$22,420 per Item (\$3,363,000 for 150 Items)
Estimated Total Cost to Lessor of Equipment:	\$26,650 per Item (\$3,997,500 for 150 Items)
Term Lease Commencement Date:	January 5, 1978
Place of Delivery:	Rebuilding Plant of the Lessee at St. Cloud, Minnesota
Fixed Rental Payments:	Thirty (30) semiannual Fixed Rental installments in arrears as follows: 1. The first nine (9) such installments shall be equal to 3.98027% of the Total Cost of each Item of Equipment; and 2. The final twenty-one (21) such installments shall each be equal to 4.76364% of the Total Cost of each Item of Equipment.

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

April 15, 1977

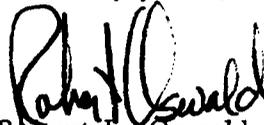
Ronald Roden
111 West Monroe Street
Chicago, IL 60603

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **4-15-77** at **11:35 AM**, and assigned recordation number(s) **8784.**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure(s)

BURLINGTON NORTHERN INC.

SCHEDULE OF CASUALTY VALUE

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental payment date shall mean an amount equal to the percent of the Total Cost of such Item as set forth in Schedule A to the Lease, set forth opposite such date in the following schedule:

<u>Term Lease Commencement Date or Number of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Total Cost Payable as Casualty Value</u>
Term Lease Commencement Date	109.201
1	109.201
2	108.732
3	108.764
4	108.634
5	108.362
6	107.941
7	101.569
8	100.635
9	99.544
10	97.510
11	89.377
12	87.024
13	84.532
14	81.911
15	73.239
16	70.380
17	67.400
18	64.315
19	61.114
20	57.817
21	54.408
22	50.914
23	47.320
24	43.653
25	39.905
26	36.091
27	32.198
28	28.237
29	24.195
30 and thereafter	21.000

(Burlington Northern No. 77-6)

SCHEDULE C

(to Equipment Lease)

8724

RECORDATION NO. Filed & Recorded

APR 15 1977 -11 35 AM

~~INTERSTATE COMMERCE COMMISSION~~

EQUIPMENT LEASE

Dated as of March 1, 1977

BETWEEN

PACIFIC SYSTEMS, INC.
as Lessor

AND

BURLINGTON NORTHERN INC.
as Lessee

(Burlington Northern No. 77-6)
(150 Rebuilt Open-top Hopper Cars)

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ATTACHMENTS TO EQUIPMENT LEASE:

SCHEDULE A -- Description of Items of Equipment

SCHEDULE B -- Certificate of Acceptance Under
Equipment Lease

SCHEDULE C -- Schedule of Casualty Value

BURLINGTON NORTHERN INC.

EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of March 1, 1977 between PACIFIC SYSTEMS, INC., a California corporation (the "Lessor") and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee");

W I T N E S S E T H:

That for and in consideration of the premises and of the rental to be paid and the covenants hereinafter mentioned the parties hereby agree as follows:

SECTION 1. PURCHASE, RECONSTRUCTION AND DELIVERY OF EQUIPMENT.

1.1. The Lessor and the Lessee have entered into a Reconstruction Agreement dated as of March 1, 1977 (the "Reconstruction Agreement") providing for the reconstruction by the Lessee of certain items of railroad equipment (collectively the "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof in accordance with the specifications (the "Specifications") referred to in the Reconstruction Agreement, and upon delivery of each Item of Equipment and the acceptance of such Item of Equipment as provided in Section 1.2 hereof, the Lessor shall lease and let such Item of Equipment to the Lessee and the Lessee shall hire such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

1.2. The Lessor will cause each Item of Equipment to be tendered to the Lessee at such point or points as may be determined in accordance with the provisions of Section 2 of the Reconstruction Agreement. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor a Certificate of Acceptance in the form attached hereto as Schedule B (the "Certificate of Acceptance") with respect to such Item of Equipment.

1.3. The Lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to each Item of Equipment shall conclusively establish that such Item of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture,

condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the Specifications applicable thereto and to all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any, and to all standards recommended by the Association of American Railroads applicable to railroad equipment of the character of the Equipment as reconstructed as of the date of this Lease. Upon execution and delivery of such Certificate of Acceptance, the Lessee shall represent that it has no knowledge of any such defect.

SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rentals for Equipment. The Lessee agrees to pay the Lessor for each Item of Equipment leased hereunder thirty (30) semiannual installments of rental ("Fixed Rental") each payable in arrears in the amount provided in Schedule A hereto.

2.2. Adjustment of Rentals. In the event that (i) the Lessor pays an amount equal to 100% of the Total Cost of the Equipment pursuant to Section 2.4 of the Participation Agreement hereinafter referred to, or (ii) the sum of the expenses paid by the Lessor pursuant to Section 7(b) of the Participation Agreement exceeds 1.2% of the Total Cost of the Equipment, or (iii) the Closing Date under the Participation Agreement occurs on a date later than October 1, 1977, or (iv) the Reconstruction Price (as defined in the Reconstruction Agreement) of any Item of Equipment is not equal to 84.13% of the Total Cost of such Item of Equipment, the Lessee and the Lessor agree that the Fixed Rental and the Casualty Values (as defined in Section 11.6 hereof) shall be adjusted to an amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic yields and cash flows that would have been realized by the Lessor if any of the conditions specified in clauses (i) through (iv) above had not occurred; provided, that the Fixed Rental and the Casualty Values, as so adjusted, with respect to any Item of Equipment shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes issued under the Participation Agreement due and payable on each rent payment date under this Lease.

In addition, if there is any amendment to or change in, the Internal Revenue Code of 1954, as amended (the "Code"), or any Regulation thereunder or any published Revenue Ruling which is enacted or adopted on or prior to December 31, 1977, or subsequent changes in the Code or any Regulation thereunder or any published Revenue Ruling which is given retroactive effect prior to December 31, 1977, and if such amendment or change affects the Investment Tax Credit (as defined in the Tax Indemnity Agreement dated as of March 1, 1977 (the "Indemnity Agreement")

to Lessor

between the Lessor and the Lessee) allowable with respect to any Item of Equipment or the Depreciation Deductions (as defined in the Indemnity Agreement) or the Interest Deduction (as defined in the Indemnity Agreement), or if such amendment or change affects the current Federal income tax rate, as in effect on the date of execution of this Lease then the amount of Fixed Rental and the Casualty Values hereunder shall be adjusted in order that the Lessor's after-tax economic yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) will not be increased or decreased by reason of such amendment or change; provided, however, that the Fixed Rental and Casualty Values, as so adjusted, with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes issued under the Participation Agreement due and payable on each rent payment date under this Lease, and (ii) shall comply with the guidelines for a favorable ruling set forth in Revenue Procedure 75-21 that the transaction is a true lease.

2.3. Rental Payment Dates. The installments of Fixed Rental for each Item of Equipment shall be due and payable semi-annually following the Term Lease Commencement Date provided for in Schedule A hereto. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of California, Maryland or Minnesota are authorized or required to close.

2.4. Place of Rent Payment. The Lessor irrevocably instructs the Lessee to make all payments [other than payments owing to the Lessor pursuant to Sections 6, 10.2, 11.1 (with respect to public liability insurance) and 20.3 hereof or payments due or becoming due following the payment in full of all principal, premium, if any, and interest on the Notes of the Lessor issued pursuant to the Participation Agreement dated as of March 1, 1977 (the "Participation Agreement") among the Lessor, the Lessee, Mercantile-Safe Deposit and Trust Company, as security trustee (the "Security Trustee") and the Note Purchasers named in Schedule 1 thereto, which payments shall be made directly to the Lessor at such place and in such manner as the Lessor shall specify to the Lessee in writing] provided for in this Lease at the principal office of the Security Trustee for the account of the Lessor payable to the Security Trustee, with instructions to the Security Trustee, first, to apply such payments to satisfy the obligations of the Lessor in respect of said Notes known to the Security Trustee to be due and payable on the date such payments are due and payable hereunder, and second, so long as no Event of Default hereunder or under the Security Agreement (as defined in the Participation Agreement) shall have occurred and be continuing, to pay any balance promptly to the Lessor by wire transfer of immediately available funds to such bank in the United States as

the Lessor shall designate to the Security Trustee in writing or by cashier's check of the Security Trustee mailed to the Lessor at such address as the Lessor shall designate to the Security Trustee in writing. The Lessee agrees that it will make payments due hereunder by wire transfer at the opening of business on the due date of such payment of immediately available funds to the party to whom such payment is to be made.

2.5. Net Lease. This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof, nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment or any defect in or damage to or loss or destruction of all or any of the Equipment from any cause whatsoever, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, 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 unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Section 11 hereof, shall terminate fifteen (15) years following the Term Lease Commencement Date provided for in Schedule A hereto with the privilege of renewal and purchase provided for in Section 18 hereof.

SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.

4.1. Retention of Title. The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

4.2. Duty to Number and Mark Equipment. The Lessee will cause each Item of Equipment to be kept numbered with its road number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

"Leased from Pacific Systems, Inc.,
as Lessor, and subject to a Security
Interest recorded with the I.C.C."

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the road number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

4.3. Prohibition Against Certain Designations. Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS WITHOUT WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT INCLUDING WITHOUT LIMITATION THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (D) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby 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 and for the account of the

Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against any manufacturers or contractors in respect thereof.

SECTION 6. LESSEE'S INDEMNITY.

6.1. Scope of Indemnity. The Lessee shall defend, indemnify and save harmless the Lessor and its successors and assigns from and against:

(a) any and all loss or damage of or to the Equipment, usual wear and tear excepted, and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith) which may be incurred in any manner by or for the account of any of them (i) relating to the Equipment or any part thereof, including, without limitation, the construction, reconstruction, purchase, delivery, installation, ownership, leasing or return of the Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessor or by the Lessee), (ii) by reason or as the result of any act or omission of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent infringements, or (iv) as a result of claims for negligence or strict liability in tort.

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability, except that counsel selected by the Lessee to represent the Lessor shall be subject to the prior approval of the Lessor which approval shall not be unreasonably withheld.

SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads as the same may be in effect from time to time) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense.

SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair pursuant to this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee.

SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest

the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. Filing. The Lessee will, at its sole expense, cause this Lease, and the first security agreement and/or assignment, if any, executed by the Lessor with respect to the Equipment or this Lease to be duly filed, recorded or deposited with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, with the Registrar General of Canada (with notice of such deposit to be published in The Canada Gazette in accordance with Section 86 of the Railway Act of Canada) and in such other places within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the secured party under such security agreement and/or assignment and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, re-register or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or such secured party's security interest in, the Equipment to the satisfaction of the Lessor's or such secured party's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action.

10.2. Indemnification for Non-Income Taxes. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay, and to indemnify and hold the Lessor 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 Lessor 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 Item 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 or the Participation Agreement or the Hulk Purchase Agreement or the Reconstruction Agreement referred to therein, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment

(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 or any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Lessor or franchise taxes measured by the net income of the Lessor, or gross receipts taxes other than gross receipts taxes in the nature of sales, use or similar transaction taxes; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor or any transfer or disposition by the Lessor resulting from bankruptcy or other proceedings for the relief of creditors in which the Lessor is the debtor, whether voluntary or involuntary, of any interest in any Item or interest in rentals under this Lease. The Lessee will also pay promptly all Taxes which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all Taxes which might in any way affect the title of the Lessor or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Taxes so long as it is contesting in good faith and by appropriate legal proceedings such Taxes and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Hulk Purchase Agreement or under the Reconstruction Agreement. If any Taxes shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor. Prior to making such payment, the Lessor shall promptly notify the Lessee of the Taxes charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Taxes, at its sole expense.

In the event any reports with respect to Taxes are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show the interests of the Lessor and any assignee under Section 16 hereof in such Items of Equipment or notify the Lessor and any such assignee of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and any such assignee.

In the event that, during the continuance of this Lease, any Tax accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Taxes are paid or reimbursed by the Lessee.

SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE.

11.1. Insurance. The Lessee covenants and agrees that it will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained for each Item from time to time subject to this Lease, property and public liability insurance in such amounts and against such risks and with such insurers as shall be satisfactory to the Lessor and the Security Trustee; provided, that, in the case of property insurance, the Lessee will be permitted to self-insure to the extent it self-insures equipment similar in nature to the Equipment which it owns or leases, but in any event the Lessee shall maintain in effect such property insurance as is required by prudent industry practice in respect of equipment similar in nature to the Equipment. All such property insurance policies shall provide that the Lessor and the Lessee shall be assureds and that losses shall be adjusted with the Lessee and that the proceeds thereof shall be payable to the Lessor and the Lessee as their interests shall appear; provided that so long as any Note or interest thereon shall remain unpaid, such policies shall provide that the losses, if any, shall be payable to the Security Trustee under a standard mortgage loss payable clause satisfactory to the Lessor and the Security Trustee. All proceeds of insurance received by the Lessor and the Security Trustee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and the Security Trustee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and the Security Trustee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks required by prudent industry practice in respect of equipment similar in nature to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of equipment similar in nature to the Equipment which it owns or leases. The Lessee represents and warrants that, as of the date of execution of this Lease, it maintains in effect general public liability insurance with respect to its operations (including the Equipment) against damages because of bodily injury, including death, or damage to the property of others. The Lessee represents and agrees that all policies of insurance carried pursuant to the first sentence of this paragraph will name the Lessor, the Lessee and the Security Trustee as assureds, and the Lessee further represents that such insurance currently in effect affords protection in an amount of not less than \$30,000,000 in excess of the first \$3,500,000 for damages resulting from any one accident.

All policies of insurance to be carried pursuant to this Section 11.1 shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each insured named therein. No such policy shall provide that the coverage thereunder for the benefit of the Lessor or the Security Trustee shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policies and the Lessee shall, upon the request of the Lessor (but not more frequently than annually), furnish either a certificate of the insurer to such effect or a certificate of an officer of the Lessee or an opinion of counsel of the Lessee that no such policy contains such provisions. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and the Security Trustee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 11.1.

11.2. Duty of Lessee to Notify Lessor. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its terms is for an indefinite period or is for a stated period which does not exceed the term of this Lease, being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Security Trustee in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms hereof.

11.3. Payment for Casualty Loss. In the event of a Casualty Occurrence with respect to any Item of Equipment of which the Lessee has knowledge prior to the Term Lease Commencement Date, the Lessee, on the Term Lease Commencement Date, shall pay to the Lessor a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment. In the event of a Casualty Occurrence with respect to any Item of Equipment of which the Lessee has knowledge on or after the Term Lease Commencement Date, the Lessee, on the next succeeding Fixed Rental payment date, shall pay to the Lessor the Fixed Rental installment due on such payment date for such Item of Equipment plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

11.4. Rent Termination. Upon (and not until) payment of the Casualty Value in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

11.5. Disposition of Equipment. The Lessee shall, as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is, where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of the Lessee may retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor. In disposing of such Item of Equipment, the Lessee shall take such action as the Lessor shall reasonably request to terminate any contingent liability which the Lessor might have arising after such disposition from or connected with such Item of Equipment.

11.6. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Total Cost (as defined in the Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule C opposite such date of payment.

11.7. Risk of Loss. The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and Fixed Rental installment due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

11.8. Eminent Domain. In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay rent shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation

for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before March 31 in each year, commencing with the year 1978, the Lessee will furnish to the Lessor and its assigns an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

12.2. Lessor's Inspection Rights. The Lessor and any assignee of the Lessor pursuant to Section 16 hereof each shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor or, as the case may be, such assignee, the existence and proper maintenance thereof during the continuance of this Lease.

SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor upon such storage tracks of the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment on such tracks for a period not exceeding 90 days and transport the same at any time within such 90-day 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 Lessor upon not less than 30 days' written notice to the Lessee; provided, that the obligations of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, 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 Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

SECTION 14. DEFAULT.

14.1. Events of Default. Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or other sums provided in Section 2 or 11 hereof and such default shall continue for fifteen (15) days; or

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof; or

(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 and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by the Lessee herein or in the Participation Agreement, the Hulk Purchase Agreement or the Reconstruction Agreement or in any statement or certificate furnished to the Lessor or its assigns pursuant to or in connection with this Lease, the Participation Agreement, the Hulk Purchase Agreement or the Reconstruction Agreement is untrue in any material respect as of the date of issuance or making thereof; or

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

14.2. Remedies. If any Event of Default has occurred and is continuing, the Lessor, at its option, may:

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

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any

of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

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

14.4. Lessor's Failure to Exercise Rights. The failure of the Lessor to exercise the rights granted it hereunder upon any 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.

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport the Equipment to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may direct in writing.

15.2. Specific Performance. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor 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 Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor 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 Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall

be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of such assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of such assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

17.1. Lessee's Rights to the Equipment. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage

or other operating rights or over which equipment of the Lessee is regularly operated pursuant to contract and also to permit the use of any Item of Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, but only upon and subject to all the terms and conditions of this Lease. Notwithstanding the foregoing, the Lessee shall at no time throughout the term of this Lease assign or permit the assignment of any Item of Equipment to service (including, without limitation, the regular operation and maintenance thereof) outside the continental United States. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of the Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.

18.1. Right of First Refusal. Unless an Event of Default, or any event or condition which, upon notice or lapse of time, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) sell, transfer or otherwise dispose of the Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of

purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessee shall not have notified the Lessor, within 20 days following receipt of such notice, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Items of Equipment, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice. If the Lessee shall have so elected to purchase such Items of Equipment, the Lessee agrees that it will pay the reasonable costs and expenses of the proposed purchaser or purchasers making the highest offer with respect to each Item of Equipment; provided, however, that the liability of the Lessee for such costs and expenses shall not exceed \$5,000 in the aggregate. Notwithstanding the foregoing provisions of this Section 18.1, the Lessor may, if the Lessee has not renewed this Lease pursuant to Section 18.2 hereof, lease the Equipment at any time after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, at the end of such renewal term) without first offering to lease the Equipment to the Lessee.

18.2. Renewal Options. Provided that the Lessee is not in default hereunder, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for one or more additional renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease; provided, that the semiannual Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2; and

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an

informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease. If on or before 90 days prior to the date of commencement of the renewal term elected by the Lessee, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Item of Equipment, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term "Appraiser" shall mean two independent appraisers, one chosen by the Lessor and one chosen by the Lessee, or, if such appraisers cannot agree on the amount of such value within 60 days prior to the date of commencement of the renewal term elected by the Lessee, determined on the basis of an appraisal made by a third appraiser chosen by the American Arbitration Association. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

18.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 9.25% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. MISCELLANEOUS.

20.1. Limitations of Liability. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against the Lessor, or any incorporator or any past, present or future subscriber to the capital stock of, the Lessor, on account of

this Lease or on account of any representation, covenant, undertaking or agreement of the Lessor in this Lease contained, either express or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that: (i) the Lessor shall be liable for any and all damages directly resulting from any breach of its covenants and warranties contained in Section 18 hereof, and (ii) the Lessee or any person claiming by, through or under it, making claim hereunder, may look to the Equipment for satisfaction of the same.

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

If to the Lessor: Pacific Systems, Inc.
Post Office Box 37070
San Francisco, California 94137

Attention: Accounting Director

If to the Lessee: Burlington Northern Inc.
Burlington Northern Building
176 East Fifth Street
St. Paul, Minnesota 55101

Attention: R. C. Burton, Jr.
Assistant Vice President,
Financial Planning

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

20.3. Right of Lessor to Perform. If the Lessee shall fail to comply with any of its covenants herein contained, the Lessor may, but shall not be obligated to, make advances to perform the same and to take all such action as in the Lessor's opinion may be necessary to obtain such performance. All payments so made by the Lessor and all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the Lessor upon demand as additional rent hereunder, with interest at the rate of 9.25% per annum.

20.4. Execution in Counterparts. This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

20.5. Law Governing. This Lease shall be construed in accordance with the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

20.6. Headings and Table of Contents. All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

20.7. 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 provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

PACIFIC SYSTEMS, INC.

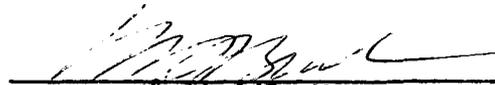
[CORPORATE SEAL]

ATTEST:


Sandra Cooper Woodman
Assistant Secretary

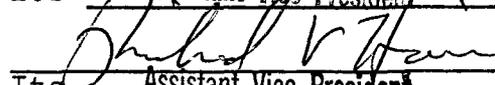
By

Its


Assistant Vice President

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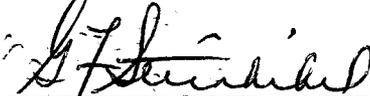

Assistant Vice President

LESSOR

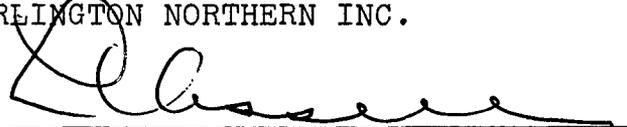
BURLINGTON NORTHERN INC.

[CORPORATE SEAL]

ATTEST:


Assistant Secretary

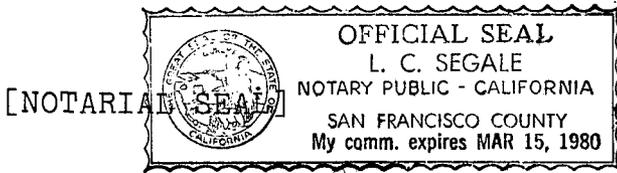
By


Treasurer

LESSEE

STATE OF CALIFORNIA)
) SS
CITY AND COUNTY OF SAN FRANCISCO)

On this 13th day of April, 1977, before me personally appeared Walter H. Buck and Richard V. Harris, respectively, to me personally known, who being by me duly sworn, say that they are Asst Vice President and Asst Vice President respectively, of PACIFIC SYSTEMS, 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 they acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



L. C. Segale
Notary Public

My commission expires:

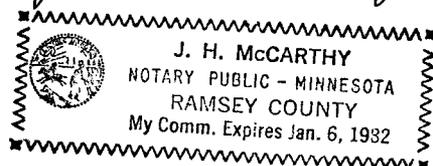
STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

On this 14th day of April, 1977, before me personally appeared L. N. ASSELL, to me personally known, who being by me duly sworn, says that he is the 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.

J. H. McCarthy
Notary Public

[NOTARIAL SEAL]

My commission expires:



DESCRIPTION OF ITEMS OF EQUIPMENT

Description and Mark and Number of Reconstructed Items of Equipment:	150 70-ton Rebuilt Open-top Hopper Cars, Marked and Numbered BN 548850 to BN 548999, both inclusive.
Base Purchase Price to Lessor of Original Equipment:	\$4,230 per Item (\$634,000 for 150 Items)
Estimated Reconstruction Cost to Lessor of Equipment:	\$22,420 per Item (\$3,363,000 for 150 Items)
Estimated Total Cost to Lessor of Equipment:	\$26,650 per Item (\$3,997,500 for 150 Items)
Term Lease Commencement Date:	January 5, 1978
Place of Delivery:	Rebuilding Plant of the Lessee at St. Cloud, Minnesota
Fixed Rental Payments:	Thirty (30) semiannual Fixed Rental installments in arrears as follows: 1. The first nine (9) such installments shall be equal to 3.98027% of the Total Cost of each Item of Equipment; and 2. The final twenty-one (21) such installments shall each be equal to 4.76364% of the Total Cost of each Item of Equipment.

(Burlington Northern No. 77-6)

CERTIFICATE OF ACCEPTANCE
UNDER EQUIPMENT LEASE

TO: PACIFIC SYSTEMS, INC., as Lessor under the Equipment Lease dated as of March 1, 1977 (the "Lessor").

I, a duly appointed and authorized representative of Burlington Northern Inc. (the "Lessee") under the Equipment Lease dated as of March 1, 1977 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment:

TYPE OF EQUIPMENT: 70-ton Rebuilt Open-top Hopper Cars
PLACE ACCEPTED:
DATE ACCEPTED:
NUMBER OF UNITS:
MARKED AND NUMBERED:

I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the Specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from Pacific Systems, Inc., as
Lessor, and subject to a Security
Interest Recorded with the I.C.C."

The execution of this Certificate will in no way relieve or decrease the responsibility of Burlington Northern Inc. for any warranties it has made with respect to the Equipment.

DATED: _____, 1977

Inspector and Authorized Represent-
ative of Burlington Northern Inc.

(Burlington Northern No. 77-6)

SCHEDULE B
(to Equipment Lease)