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INTERSTATE COMMERCE COMMISSION

LEASE OF RAILROAD EQUIPMENT

Dated as of September 15, 1974

between

BURLINGTON NORTHERN INC.,

as Lessee,

and

**TRUST COMPANY FOR USL, INC., as Trustee under a Trust Agreement dated
as of September 15, 1974 with American Road Equity Corporation,**

as Lessor

LEASE OF RAILROAD EQUIPMENT dated as of September 15, 1974, between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee), and TRUST COMPANY FOR USL, INC., an Illinois trust company, as Trustee (hereinafter, together with its successors and assigns, called the Lessor) under a Trust Agreement dated as of September 15, 1974, with American Road Equity Corporation, a Delaware corporation (hereinafter called the Beneficiary).

WHEREAS, the Lessor and the Lessee have entered into conditional sale agreements dated as of the date hereof (hereinafter called the Security Documents), with General Electric Company and General Motors Corporation (Electro-Motive Division), respectively (hereinafter called the Builders), wherein the Builders have agreed to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule I hereto (hereinafter called the Equipment);

WHEREAS, the Builders are assigning their respective interests in and to the Security Documents to Wells Fargo Bank, National Association, as agent (hereinafter, together with its successors and assigns, called the Vendor) for certain institutional investors (hereinafter called the Investors); and

WHEREAS, the Lessee desires to lease all the units of the Equipment, or such lesser number (hereinafter called the Units) as are delivered and accepted and settled for under the Security Documents at the rentals and for the terms and upon the conditions hereinafter provided;

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

§1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documents. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), stating that such Unit has been inspected and accepted by the

Lessee and on behalf of the Lessor on the date of such Certificate of Delivery and is marked in accordance with §4 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, unless such Unit shall not be settled for under the applicable Security Document in which case such Unit shall be returned to the Lessor in the manner set forth in §13 hereof upon the exclusion of such Unit from such Security Document.

§2. *Rentals.* The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, in immediately available funds as follows: (i) on the Commitment Fee Payment Date (as defined in the Security Documents), (x) for each day elapsed from and including October 23, 1974, to but not including the Commitment Fee Payment Date, an amount computed at a rate equal to $\frac{1}{2}$ of 1% divided by 360 applied to (a) \$2,692,892.88 (hereinafter called the Bank of Montreal Commitment) for the period up to but not including the first Closing Date (as defined in the Security Documents) for units of Equipment under any Security Documents and (b) the portion, if any, of the Bank of Montreal Commitment Amount not applied by the Lessor on the first Closing Date in accordance with subparagraph (a) of the third paragraph of Article 4 of the Security Documents, for the period from and including the first Closing Date up to but not including the date of the application thereof (or any portion thereof) on any subsequent Closing Date or Dates or as to any portion thereof not so applied, up to but not including January 7, 1975 and (y) for each day elapsed from September 20, 1974, to and including the Commitment Fee Payment Date, an amount computed at a rate equal to $\frac{1}{2}$ of 1% divided by 360 applied to (a) \$3,291,313.52 (hereinafter called the First National City Commitment) for the period up to but not including the first Closing Date for any units of Equipment under the Security Documents and (b) the portion, if any, of the First National City Commitment which is not applied by the Lessor on the first Closing Date in accordance with subparagraph (a) of the third paragraph of Article 4 of the Security Documents for the period from and including said first Closing Date up to but not including the date of application thereof (or any portion thereof) on any subsequent Closing Date or Dates or as to any portion thereof not so applied, up to but not including January 7, 1975, such aggregate amount to be payable on the Commitment Fee Payment Date whether or not any Closing Dates have

occurred on or before the Commitment Fee Payment Date. For the purpose of determining the respective amounts of the Bank of Montreal Commitment and the First National City Commitment applied on any Closing Date it shall be assumed that of the amounts applied on each Closing Date, 45% was applied by use of the Bank of Montreal Commitment and 55% was applied by use of the First National City Commitment; (ii) on January 8, 1975, an amount equal to the aggregate amounts computed by multiplying the amounts applied by the Lessor on the first Closing Date (as defined in the Security Documents) and each subsequent Closing Date in accordance with subparagraph (a) of the third paragraph of Article 4 of the Security Documents for each day from and including the date of such application to, but not including, January 8, 1975, by the Interim Rate (as defined in the Security Documents) in effect on each such day; (iii) a rental payment on January 8, 1975, in an amount equal to $11,446/11,946$ ths of the Purchase Price (as defined in the Security Documents) of each Unit subject to the Lease multiplied by the Interim Rate (as defined in the Security Documents) for each day elapsed from and including the Closing Date (as defined in the Security Documents) for such Unit to but not including January 8, 1975; (iv) a rental payment on January 21, 1975, in an amount equal to $500/11,946$ ths of the Purchase Price of each Unit subject to the Lease multiplied by the Interim Rate for each day elapsed from and including the Closing Date for such Unit to but not including January 21, 1975; (v) on the Commitment Fee Payment Date (as defined in the Security Documents), irrespective of settlement for any Units under the Security Documents on or before such date, a rental payment in an amount equal to the Commitment Fees (as defined in the Security Documents) payable to the Vendor pursuant to Article 4 of the Security Documents; (vi) on July 8, 1975, a rental payment in an amount equal to 3.5811% multiplied by the Purchase Price of each Unit then subject to this Lease less an amount equal to interest at the rate of $10\frac{3}{4}\%$ per annum for the period from and including January 8, 1975, to but not including January 21, 1975, on $500/11,946$ ths of the Conditional Sales Indebtedness; and (vii) 29 consecutive semiannual rental payments on January 8 and July 8 in each year commencing January 8, 1976, each in an amount equal to the applicable basic lease rate therefor set forth in Schedule II hereto multiplied by the Purchase Price (as defined in the Security Documents) of each Unit then subject to this Lease.

If any of the rental payment dates referred to above is not a business day (as defined in the Security Documents) the rental payment otherwise payable on such date shall be payable on the next succeeding business day, and no interest on such payment shall accrue for the period from and after the nominal date for payment thereof to such next succeeding business day.

The Lessor irrevocably instructs the Lessee to make all the payments provided for in this Lease at the principal office of the Vendor, for the account of the Lessor, in care of the Vendor, with instructions to the Vendor first to apply such payments to satisfy the obligations of the Lessor under the Security Documents known to the Vendor to be due and payable on the date such payments are due and payable hereunder and second, so long as no event of default under any Security Document shall have occurred and be continuing, to pay any balance promptly to the Lessor at such address as may be specified to the Vendor in writing. The Lessee agrees to make each payment provided for herein as contemplated by this paragraph in immediately available funds in the city where such payment is to be made.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or under the Security Documents, including the Lessee's rights by subrogation thereunder, or the Builder or the Vendor (including any claims under the Finance Agreement dated as of the date hereof among Vendor, the Lessee and the Investors [hereinafter called the Finance Agreement]) or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency of or the bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents

and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or the Vendor or any Investor for any reason whatsoever.

§3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§1, 6, 9, 12 and 16 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon the occurrence of an Event of Default hereunder or an event of default under a Security Document, are subject to the rights of the Vendor under such Security Document. If an event of default should occur under a Security Document, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under such Security Document.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule I hereto, or in the case of any Unit not there listed such identifying 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 "Wells Fargo Bank, National Association, Agent—Security Owner, San Francisco, California, leased from Trust Company for USL, Inc., Trustee—Conditional Vendee" or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title to and property in such Unit of the Lessor, the Vendor or

any assignee of either and the rights of the Lessor under this Lease and of the Lessor and Vendor under the Security Documents. The cost of such markings in the event of a change of the name of the Lessor shall be borne by the Lessor. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit unless and until a statement of new number or numbers to be substituted therefor shall have been filed with the Vendor and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease and the Security Documents shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§5. *Taxes and Expenses.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor and the Beneficiary for collection or other charges and will be free of expense to the Lessor and the Beneficiary with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Beneficiary in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Beneficiary has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms

hereof or the Security Documents, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or the Vendor under the Security Documents. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof. If any impositions 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.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor or otherwise pursuant to any correlative provision of the respective Security Documents, or the Beneficiary shall become obligated to make any payment to the Lessor in its individual capacity pursuant to any correlative provision of the Trust Agreement referred to in the first paragraph hereof, not covered by the foregoing paragraph of this §5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor or the Beneficiary to fulfill completely its obligations pursuant to said provisions.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this §5, such liability shall continue, notwithstanding the

expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise or General Motors Corporation (Electro-Motive Division) shall be required to refund the Purchase Price of any Unit pursuant to the third paragraph of Item 4 of Annex A to its Security Document (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Vendor with respect thereto including notice as to the date on which such casualty occurrence took place. On the January 8th or July 8th next succeeding such notice, the Lessee shall pay to the Lessor an amount equal to the rental payment or payments in respect of such Unit due and payable on such rental payment date plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue effective at the rental payment date next succeeding such notice, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit shall, except as set forth in the next paragraph, be an amount equal to the product of (a) the Purchase Price of such Unit and (b) that percentage set forth in Schedule III hereto opposite the rental date on which the casualty Value with respect to such Unit is paid.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease and before such Unit shall have been returned in the manner provided in §13 hereof, the Lessee shall promptly and fully notify the Lessor with respect thereto and pay to the Lessor an amount equal to the Casualty Value of such Unit, which shall be an amount equal to the product of (a) the Purchase Price of such Unit and (b) 15%. Upon the making of any such payment by the Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), the Lessee shall be entitled to recover possession of such Unit.

Except as hereinabove in this §6 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 to and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in each Security Document so long as the indebtedness, if any, evidenced by such Security Document shall not have been paid in full, and thereafter to the Lessor 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 to the Lessor and the Vendor and (ii) name the Lessor (and the Vendor) as additional named insureds as their respective interests may appear and shall provide that in respect of the interests of the Lessor 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 Lessor and the Vendor) and shall insure the Lessor 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 Lessor or the Vendor). Any net insurance proceeds as the result of insurance carried by the Lessee, any condemnation payments or any payments by the Builder pursuant to the third paragraph of Item 4 of the Security Document to which General Motors Corporation (Electro-Motive Division) is a party received by the Lessor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this §6 up to an amount equal to the Casualty Value with respect to a Unit and any balance of such proceeds shall remain the property of the Lessor. If the Lessor shall receive any such net insurance proceeds, condemnation payments or such payments by the Builder after the Lessee shall have made payments pursuant to this §6 without deduction for such net insurance proceeds, such condemnation payments or such payments by the Builder, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

§7. *Reports.* On or before March 31 in each year, commencing with the calendar year 1975, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Security Documents, the amount, description and numbers of

all Units that have suffered a Casualty Occurrence (including the date of such occurrence) or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by §4 hereof and the Security Document have been preserved or replaced and (c) setting forth with respect to the Units as a whole, the percentage of time and mileage spent and traveled by such units within and without the United States during such calendar year. The Lessor and the Beneficiary shall have the right, upon reasonable notice, to cause their agents to inspect the Units and, the Lessee's records with respect thereto and such other matters in connection therewith as the Lessee or the Beneficiary shall reasonably request, all at such reasonable times as the Lessor or the Beneficiary may request during the continuance of this Lease.

The Lessee also agrees to furnish the Lessor and the Vendor (i) as soon as practical but in any event within 90 days after the close of each fiscal year of the Lessee, a consolidated balance sheet of the Lessee and its consolidated subsidiaries as of the close of such fiscal years, together with the related consolidated statement of income, surplus and source and application of funds for such fiscal years prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year, all in reasonable detail and certified by a recognized national firm of independent public accountants, including their certificates and accompanying comments, (ii) as soon as practical but within 45 days after the close of the fiscal year of the Lessee, a certificate of the Lessee, signed by a principal financial officer, to the effect that the signer has reviewed the relevant terms of this Lease and the Security Documents and has made, or caused to be made under his supervision, review of the transactions and conditions of the Lessee during the preceding fiscal year, and that such reviews have not disclosed the existence during such period, nor does the signer have knowledge of the existence as at the date of such certificate, of any condition or event which constitutes an Event of Default under this Lease or an event of default under either Security Document or which, after notice or lapse of time or both would constitute an Event of Default or event of default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action

the Lessee has taken or is taking or proposes to take with respect thereto, (iii) unaudited quarterly reports of similar tenor to that set forth in clause (i), as soon as practical but within 45 days after the end of each quarterly accounting period, and (iv) from time to time such other information as the Lessor or the Vendor may reasonably request. The Lessee also agrees promptly to furnish the Lessor and the Vendor notice in writing of any matter which, in its opinion, might materially adversely affect the financial condition, affairs or operations of the Lessee. The Lessee also agrees to furnish the Lessor from time to time on request such information as either the Lessee or the Lessor may be required to furnish to any person pursuant to the Security Documents or the Trust Agreement.

§8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **The Lessor makes no 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 Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor 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 account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as Vendee, under Article 14 of the Security Documents, *provided, however,* that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor 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 Delivery shall be conclusive evidence as between the Lessee and the Lessor that all 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 Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor 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 applicable to the Units and with all 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 of any Unit, or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Lessee may, 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 Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor under this Lease or under the Security Documents. The Lessee agrees to give the Lessor notice of such contest within 30 days after institution thereof.

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 the same operating order, repair and condition as when originally delivered to the Lessee (or installed on such Unit), reasonable wear and tear excepted.

Any and all additions to any Unit (except, in the case of any Unit which is a locomotive, communications, signal and automatic control equipment or devices having a similar use which have been added to such Unit by the Lessee, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body), and any and all parts installed on and

additions and replacements made to any Unit shall constitute accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free from any lien, charge, security interest or encumbrance (except for those created by the Security Documents) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the equipment referred to in the first parenthetical clause of the preceding sentence from the Unit.

The Lessee agrees to indemnify, protect and hold harmless the Lessor and the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of the Finance Agreement, Security Documents or this Lease, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, except as otherwise provided in §13 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease.

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

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

A. default shall be made in payment of any part of the rental provided for in §2 hereof or in payment of any part of the Casualty Value of any Unit provided for in §6 hereof, and such default shall continue for five days;

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

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Security Documents, and such default shall continue for 30 days after written notice from the Lessor or the Vendor to the Lessee specifying the default and demanding that the same be remedied;

D. 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 and under the Security Documents and 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 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

E. 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 or under the Security Documents under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extension (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 and the Security Documents 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;

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

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof including net after tax losses of federal and state income tax benefits to which the Lessor would otherwise be entitled under this Lease; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units, subject to all mandatory requirements of due process of law, and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a rate of 5% per annum, compounded semiannually, discounted from the respective dates upon which rentals would have been payable here-

under had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental, and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor and the Beneficiary in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall, in the reasonable opinion of the Lessor and the Beneficiary, be equal to any portion of the 7% Investment Tax Credit (herein called the Investment Credit) with respect to the Purchase Price (as defined in the Security Documents) of the Units pursuant to Section 38 of the Internal Revenue Code of 1954 as amended (herein called the Code), lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §16 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default, plus such sum as will cause the Lessor's or the Beneficiary's net return under this Lease to be equal to the net return that would have been available to the Lessor or the Beneficiary if it had been entitled to utilization of all of the maximum depreciation deductions with respect to the Purchase Price (as defined in the Security Documents) of the Units based on a 12 year depreciable life for the Units authorized with respect to a Unit under Section 167 of the Code utilizing the "asset depreciation range" of 12 years for the Units prescribed in accordance with Section 167(m) of the Code (hereinafter called the Depreciation Deduction) and the deduction in each taxable year of the Lessor or the Beneficiary for all interest paid or accrued during such year on the Conditional Sale Indebtedness (as defined in the Security Documents) computed in accordance with Section 163 of the Code (hereinafter called the Interest Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in §16 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit,

any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default plus such sum as will pay or reimburse the Lessor and the Beneficiary for any interest, additions to tax, or penalties incurred in connection with the Investment Credit, Depreciation Deduction or Interest Deduction which is lost, not claimed, not available for claim, disallowed or recaptured.

The remedies in this Lease provided in favor of the Lessor 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 permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to §9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. Each Unit returned to the Lessor pursuant to this §10 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner and at usual speed, cause such Units to be placed on such storage tracks of the Lessee or any of its affiliates as shall be designated by the Lessor,

(b) arrange for the Lessor to store such Units on any lines of railroad or premises approved by the Lessor until such Units have been sold, leased or otherwise disposed of by the Lessor, 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 Lessor.

The assembling, delivery, storage 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 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 Units. During any 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 Unit, to inspect the same.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §10, 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 Unit to the Lessor, 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.

§11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, *provided, however,* that no such assignment (other than assignment provided for in Annex D to the Security Documents) shall be effective if it would result in a relationship between the Lessee and the Lessor's assignee that is forbidden by Section 10 of the Clayton Act, and, *provided, further,* that the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§5, 6, 8, 9 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of the Lessor's assigns (including any partner or any beneficiary of any such assignee if such assignee is a partnership or a trust, respectively).

So long as the Lessee shall not be in default under this Lease or under the Security Documents, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Security Documents, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them, *provided, however*, that the Lessee shall be entitled to sublease any of the Units to The Colorado and Southern Railway Company, a Colorado corporation which is an affiliate of Lessee, *but provided, further*, that no such sublease shall in any way relieve the Lessee of any of its obligations under this Lease or under the Security Documents. 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 resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or the interest of the Lessor, the Vendor or the Lessee therein, and will promptly discharge any such lien, claim, security interest or encumbrance which arises. 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 Units, except to the extent permitted by the provisions of the immediately succeeding paragraph.

So long as the Lessee shall not be in default under this Lease or under the Security Documents, 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 also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease and the Security Documents; *provided, however*, that the Lessee shall not assign or permit the assignment of any Unit to service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this §11 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 the United States of America, any state of the United States of America or the District of Columbia (which shall have duly assumed the liabilities and obligations of the Lessee hereunder and under the Security Documents) 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 or consolidation, be in default under any provision of this Lease.

§12. *Renewal and Right of First Refusal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the original or any extended term of this Lease, as the case may be, elect to extend the term of this Lease in respect of all, but not fewer than all, of such Units then covered by this Lease, for an additional two-year period commencing on the scheduled expiration of such original or extended term, as the case may be, of this Lease, at a rental payable in semi-annual payments in arrears, each in an amount equal to the "Fair Rental Value" (as hereinafter defined) of such Units, such semi-annual payments to be made on January 8 and July 8 in each year of the applicable extended term; *provided, however*, that no such renewal shall be for a term ending after January 8, 1996.

For 30 days prior to the end of the initial term of this Lease and for five days thereafter, the Lessor shall have the right to require the Lessee to purchase all or any number of the Units at a sale price which is equal to 7½% of the original Purchase Price (as defined in the Security Documents) of such Units.

"Fair Rental Value" shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) 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 value. If on or before four months prior to the expiration of the term of this Lease or any extended term hereof, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Units,

such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor may select with the approval of the Lessee, or failing such approved selection, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fees of the Appraiser shall be borne by the Lessee.

Provided that this Lease has not been earlier terminated or that the Lessee has not given notice to extend the term of this Lease as set forth above and the Lessee is not in default hereunder, the Lessor agrees that it will not sell such Units at the end of the original term of this Lease or any extended term hereof, or any of them, unless the Lessor shall have given the Lessee at least 30 business days prior written notice of such sale, specifying the sale price and terms of such sale, and the Lessee shall have had the opportunity to purchase such Unit or Units at the same price and on the same terms as specified in such notice. Such proposed sale must be to a party not affiliated with the Lessor, and the Lessor must so specify in its notice of sale to the Lessee. If the Lessee does not agree in writing to so purchase such Unit or Units within such 30 business day period, the Lessor may then sell such Unit or Units in accordance with the terms specified in such written notice.

Upon payment of the purchase price of any Unit, by the Lessee or on Lessee's behalf the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without representations or warranties) for such Unit such as will transfer to the Lessee such title to such Unit as the Lessor derived from the Builder, free and clear of all liens, security interests and other encumbrances arising through the Lessor.

§13. *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, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or any of its affiliates, as the Lessor may

designate, or, in the absence of such designation, as the Lessee may select, and permit or arrange for the Lessor to store such Unit on such tracks for a period not exceeding six months and transport the same, at any time within such six-month period, to any reasonable 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 Lessor; the movement and storage of such Unit to be at the expense and risk 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 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 Lessor or any prospective purchaser, the rights of inspection granted under this sentence. Each Unit returned to the Lessor pursuant to this §13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads applicable to the Units. 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 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 Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to §6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence.

§14. *Opinions of Counsel.* On each Closing Date under the Security Documents, the Lessee will deliver to the Lessor two counterparts of the written opinion of James W. Becker, Esq., counsel for the Lessee, or such other counsel to the Lessee who shall be satisfactory to the Lessor, addressed to the Vendor and the Lessor, in scope and substance satisfactory to the Vendor and the Lessor to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same) with adequate corporate power to enter into the Security Documents and this Lease and any acknowledgment to any assignment thereof or hereof and to own its properties and to carry on its business as now conducted and is duly qualified in each jurisdiction where the nature of its business makes such qualification necessary;

B. the Security Documents and this Lease and any consent to any assignment thereof or hereof have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms and the execution thereof will not conflict with or result in any breach of any terms or provisions of, or constitute a default under any provision of the certificate of incorporation or bylaws of the Lessee or any agreement, indenture or other instrument known to such counsel to which the Lessee is a party or by which its property is bound or any applicable law, regulation, judgment, order or decree of any government, governmental authority or instrumentality or court;

C. the Security Documents (and any assignment thereof) and this Lease (and any assignment hereof) have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or agency thereof is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units in the United States of America;

D. the Security Documents (and any assignment thereof) and this Lease (and any assignment hereof) have been duly deposited in the office of the Registrar General of Canada and appropriate provision has

been made for notice of such deposit to be published in the *Canada Gazette*, all in accordance with Section 86 of the Railway Act of Canada;

E. no approval is required from any public regulatory body with respect to the entering into or performance of the Security Documents or this Lease;

F. the entering into and performance of the Security Documents or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

G. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§15. *Recording.* The Lessee will cause this Lease, the Security Documents and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be 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 and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, re-register, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Security Documents or the assignment thereof to the Vendor; and the Lessee will promptly furnish to the Vendor and the Lessor evidences 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 Lessor. This Lease and the Security Documents shall be filed and recorded

with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Code to an owner of the property, including (without limitation) an allowance for the Investment Credit, the Depreciation Deduction and the Interest Deduction (all as defined in Section 9 of this Lease), with respect to the Units to the extent so provided.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing or which would increase the amounts of rentals required to be taken into income by the Lessor over the amount specified to be payable under this Lease on the dates due hereunder and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Investment Credit and the Depreciation Deduction with respect to the Units.

The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Units, and despite the incorporation of any used components therein, the Units will constitute "new eligible Section 38 property" within the meaning of Sections 46 and 48 of the Code, (ii) at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor and (iii) the Lessee will not at any time during the term of this Lease, use or fail to use any Unit in such a way as to disqualify it as "Section 38 property" within the meaning of Section 48(a) of the Code.

If (a) the Lessor or the Beneficiary shall lose, or shall not have or shall lose the right to claim, or if there shall be disallowed or recaptured with respect to the Lessor or the Beneficiary, all or any portion of the Investment Credit, Interest Deduction or Depreciation Deduction as provided to an owner of property with respect to a Unit for any period prior to the

termination of this Lease and full compliance by the Lessee with all of its obligations hereunder as the direct or indirect result of any act, representation, statement or failure to act of Lessee or any affiliate or any officer, employee, agent or attorney thereof or as the direct or indirect result of any change in the tax law made effective prior to or on the last Closing Date (as defined in the Security Documents) or (b) the Beneficiary shall seek and shall not have obtained by July 31, 1975 a favorable ruling from the Internal Revenue Service with respect to the tax benefits specified in clause (a) above (including a ruling that this Lease is a true lease for federal income tax purposes; that the trust created under the Trust Agreement will be treated for tax purposes as a grantor trust and not as an association taxable as a corporation; and that the Lessee is entitled to deduct its rental payments pursuant to Section 162 of the Code) (such failure to obtain such a ruling being hereby deemed to be an event causing the Lessor or the Beneficiary to lose or causing there to be disallowed or recaptured with respect to the Lessor or the Beneficiary the entire Investment Credit, the Interest Deduction and the Depreciation Deduction), then, in any such event, the Lessee shall promptly pay to the Lessor or the Beneficiary an amount which, after deduction of all taxes required to be paid by the Lessor and the Beneficiary in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States of America or under the laws of any taxing authority or governmental subdivision of a foreign country, shall in the reasonable opinion of the Lessor and the Beneficiary, be equal to any portion of the Investment Credit lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor and the Beneficiary as a consequence of such event plus such sums as, will cause the Lessor's or the Beneficiary's net return under this Lease to be equal to the net return (computed on the same assumptions as utilized by the Lessor or the Beneficiary in originally evaluating this transaction) that would have been available to the Lessor or the Beneficiary if it had been entitled to utilization of all of the Interest Deduction or Depreciation Deduction which was lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor or the Beneficiary in consequence of such event plus such sum as will pay or reimburse the Lessor and the Beneficiary for any interest, additions to tax, or penalties incurred in connection with the Investment Credit, Depreciation Deduction or Interest Deduction which is lost, not claimed, not available for claim, disallowed or recaptured; *provided, however*, that if the Lessee becomes obligated to pay any amount pursuant to clause (b) of this sentence, then, at the option of the Lessee, and in lieu of

such amount, the Lessee or a designate of the Lessee, after written notice to the Lessor, may purchase on or prior to August 31, 1975 the interest of the Lessor in the Units and the Security Documents for an amount equal to the sum of (i) 33.375% of the Purchase Price of the Units, (ii) the Lessor's and the Beneficiary's reasonable out-of-pocket expenses incurred in connection with the entering into of the transactions contemplated hereby (including the fees of United States Leasing International, Inc.), and (iii) interest on the amounts set forth in the preceding clauses (i) and (ii) at the rate of 14% per annum, compounded semiannually, from the date such amounts were paid or incurred by the Beneficiary and less (iv) any rental or casualty payment or portion thereof theretofore paid by the Lessee which has neither been applied by the Lessor to the payment of the Conditional Sale Indebtedness (as defined in the Security Documents) or interest thereon nor is then owing with respect thereto. Neither the Lessor nor the Beneficiary shall be under any obligation to claim any tax benefit which is covered in any ruling request to the Internal Revenue Service with respect to which a favorable ruling is not obtained by July 31, 1975.

If the Lessee exercises its option to purchase the interests of the Lessor, the Lessee shall, as a condition thereto, enter into a supplement to the Security Documents in form and substance satisfactory to the Vendor, pursuant to which it directly assumes all obligations of the Lessor thereunder without reference to any limitations of liability contained in the last paragraph of Article 4 or in Article 23 thereof or otherwise.

In the event that the Lessor or the Beneficiary lose any foreign tax credits as a result of the use of Units in Canada or otherwise outside the United States, the Lessee hereby agrees promptly to pay to the Lessor or the Beneficiary an amount which, after deduction of all taxes required to be paid by the Lessor and the Beneficiary in respect of the receipt thereof under the laws of any federal, state or local government or taxing authority of the United States or under the laws of any taxing authority or governmental subdivision of a foreign country, shall be equal to the excess of the foreign tax credit under Section 901 of the Code which would have been allowable to the Lessor or the Beneficiary with respect to such year and all prior years if the Lessor and the Beneficiary had not participated in the transactions contemplated by this Lease over the foreign tax credit actually allowable to the Lessor or the Beneficiary with respect to such years, together with any interest, penalties or additions to tax which may be assessed by the United

States Government against the Lessor or the Beneficiary as a result of such loss of foreign tax credits. The good faith calculation by the Tax Department of Ford Motor Company, a Delaware corporation, of all amounts due under this paragraph shall be binding on the Lessee, the Lessor and the Beneficiary. In connection therewith, the Beneficiary will provide the Lessee with a certificate of an officer of the Beneficiary setting forth in reasonable detail the figures and method used in making such calculation. Further, the Lessee hereby agrees that it will not have the right to inspect the tax returns or related documents of the Lessor, the Beneficiary or Ford Motor Company in order to confirm the calculations made by the Tax Department of Ford Motor Company pursuant to this paragraph.

Upon the commencement of any proceeding (including the written claim or written threat of such proceeding) in respect of which indemnity may be sought under clause (a) of the fourth paragraph of this §16, the Lessor shall promptly, upon its knowledge thereof, give written notice of such commencement to the Lessee. The Lessor and the Beneficiary hereby agree to use their best efforts to contest in good faith said proposed proceeding so as to minimize or avoid the liability of the Lessee to pay such indemnity.

§17. *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, with respect to rental payments due under clauses (i), (ii), (iii), (vi) or (v) of the first paragraph of Section 2 hereof, equal to the greater of the Interim Rate (as defined in the Security Documents) for each day for the period of time during which such payments are overdue or 11¾% per annum for such period, and with respect to all other overdue rentals and other obligations hereunder, at the greater of 13% per annum or the Prime Rate (as defined in the Security Documents), in effect during the period of nonpayment or, in either case, such lesser amounts as may be legally enforceable.

§18. *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 mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 1211 West 22nd Street, Oak Brook, Illinois 60521 with copies to the Beneficiary at The American Road, Dearborn, Michigan 48121, Attention of Vice President, CIR Financing and to United States Leasing International, Inc., 633 Battery Street, San Francisco, California 94115, attention Vice President—Lease Underwriting Group;

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

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

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

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the 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 officers of the Lessor and the Lessee.

§20. *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 shall be deemed to be the original counterpart. Although this Lease is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

§22. *Covenants, Representations and Warranties of Lessee.* The Lessee covenants, represents and warrants that: (i) the Lessee is a corporation duly organized and validly existing in good standing under the laws of Delaware and is duly qualified and authorized to do business wherever necessary to carry on its present business and operations and to own its properties and to perform its obligations under this Lease and under the Security Documents; (ii) the Lessee has the full power, authority and legal right to enter into and perform its obligations under this Lease and under the Security Documents, and the execution, delivery and performance of this Lease and the Security Documents have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval or approval or consent of any trustee or holders of any indebtedness or obligations of the Lessee, or such required approvals and consents have heretofore been duly obtained, certified copies thereof having been delivered to the Lessor, and do not contravene any law binding on the Lessee or any subsidiary of the Lessee or contravene the certificate of incorporation or by-laws of the Lessee or any subsidiary of the Lessee or any indenture, mortgage, contract or other agreement to which the Lessee or any subsidiary of the Lessee is a party or by which any of the aforesaid is bound, or any law, governmental rule, regulation or order; (iii) the Lessee is not a party to any agreement or instrument or subject to any charter or other corporate restriction which will materially adversely affect the financial condition, business or operations of the Lessee or the ability of the Lessee to perform its obligations under this Lease or under the Security Documents; (iv) neither the execution and delivery by the Lessee of this Lease or the Security Documents, nor the consummation of any of the transactions by the Lessee contemplated hereby or thereby, require the consent or approval of, the giving of notice to, or the registration with, or the taking of any other action in respect of, the Interstate Commerce Commission or any other federal, state or foreign governmental authority or agency, except the filing and recording of such documents with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; (v) this Lease and the Security Documents constitute valid and legally binding obligations of the Lessee enforceable in accordance with their respective terms; (vi) there are no pending or threatened actions or proceedings before any court or administrative agency which will materially adversely affect the condition, business or operations of the Lessee or any of its subsidiaries or the ability of the Lessee to perform its obligations under this Lease or the Security Docu-

ments; (vii) the Lessee and its subsidiaries have filed or caused to be filed all federal and state tax returns which are required to be filed and have paid or caused to be paid all taxes shown to be due or payable on said returns or (except to the extent being contested in good faith and for the payment of which adequate reserves have been provided) on any assessment received by the Lessee or any subsidiary of the Lessee, to the extent that such taxes have become due and payable; and (viii) the financial statements contained in the Railroad Annual Report Form R-1 and the Securities Exchange Act of 1934 Annual Report on Form 12-K of the Lessee for the year ended December 31, 1973 and the Securities Exchange Act of 1934 Quarterly Reports on Form 10-Q of the Lessee for the first two quarterly periods of 1974 and the related statements of earnings, surplus and source and application of funds of the Lessee for the three fiscal years ended December 31, 1973 (copies of which Forms and statements have been furnished the Lessor) correctly set forth the financial condition of the Lessee as of the dates, and the results of its operations of each for the periods, covered thereby, and since December 31, 1973 there has been no material adverse change (or any development involving a prospective material adverse change) in such condition, financial or otherwise, and nothing has occurred which will materially adversely affect the ability of the Lessee to carry on its business and operations or to perform its obligations under this Lease or under the Security Documents.

§23. *Immunities; No Recourse.* It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements of Trust Company for USL, Inc., or for the purpose or with the intention of binding said Trust Company personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Lease is executed and delivered by the said Trust Company solely in the exercise of the powers expressly conferred upon the said Trust Company as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trust Company except for wilful misconduct or gross negligence, or the Beneficiary or on account of any representation,

undertaking or agreement of the Lessor or the Beneficiary, 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.

§24. *Agreements for Benefit of Beneficiary.* All rights of the Lessor hereunder (including, but not limited to, its rights under §§5, 6, 8, 9, and 16 and the right to receive the rentals payable under this Lease) shall inure to the benefit of the Beneficiary and any of the Beneficiary's assigns under the Trust Agreement referred to in the first paragraph hereof.

§25. *Fees and Expenses, Etc.* The Lessee will, whether or not the transactions contemplated by the Finance Agreement shall be consummated, pay all reasonable expenses in connection with the preparation and execution of the certificates of interest as therein provided, the preparation of the other instruments and agreements contemplated therein and the delivery of such certificates to the Investors including, without limiting the generality of the foregoing, all printing costs, the fees and disbursements of the Vendor and of Messrs. Cravath, Swaine & Moore, special counsel for the Investors and the Vendor, each Investor's reasonable expenses in connection with the transaction contemplated in the Finance Agreement including the delivery of such certificates (to the home office of the Investors or as the Investors may in writing direct) and in connection with any modification of, or any waiver or consent in respect of, such certificates, the Security Documents, the Assignments (as defined in the Security Documents), the Lease Assignment (as defined in the Security Documents) or this Lease; *provided, however,* the Lessee's obligations hereunder shall be deemed to be satisfied to the extent such amounts are caused to be paid by the Lessor pursuant to Article 20 of the Security Documents. The Lessee hereby acknowledges that the amounts required to be paid by the Lessor shall be paid on behalf of the Lessor by United States Leasing International, Inc.

§26. *Miscellaneous.* The Lessee will cause to be furnished to the Lessor and the Vendor promptly after January 8, 1975 and January 21, 1975 a schedule, in such number of counterparts as shall be requested by the Lessor and the Vendor, showing the respective amounts of principal and interest payable on the Conditional Sale Indebtedness (as defined in the Security

Documents) on each Payment Date (as defined in the Security Documents) and promptly after any Casualty Occurrence any such revised schedule required by Article 7 of the Security Documents.

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 Frank H. Coyn
Vice President

[CORPORATE SEAL]

Attest:

D. A. Fleming
Assistant Secretary

TRUST COMPANY FOR USL, INC., AS
TRUSTEE,

By Ben Marchand
Vice President

[CORPORATE SEAL]

Attest:

Richard A. W.
Assistant Secretary



STATE OF NEW YORK }
COUNTY OF NEW-YORK } ss.:

On this 31 day of October, 1974, before me personally appeared FRANK H. COYNE, to me personally known, who, being by me duly sworn, says that he is a Vice President 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.

Cecelia Hildebrandt

Notary Public

CECELIA HILDEBRANDT
Notary Public, State of New York
No. 24-1794600 - Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1975

[NOTARIAL SEAL]

My Commission expires

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 31 day of October, 1974, before me personally appeared BEN MAUSHARDT, to me personally known, who, being by me duly sworn, says that he is a PRESIDENT of TRUST COMPANY FOR USL, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said trust company.

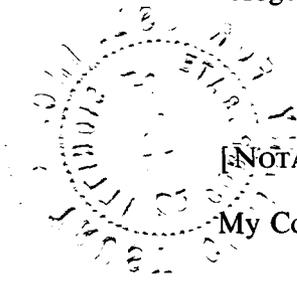
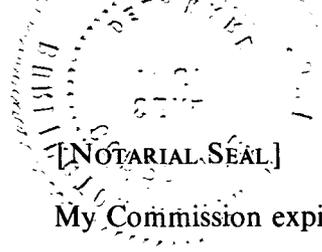
Cecelia Hildebrandt

Notary Public

[NOTARIAL SEAL]

My Commission expires

CECELIA HILDEBRANDT
Notary Public, State of New York
No. 24-1794600 - Qual. in Kings Co.
Certificate filed in New York County
Commission Expires March 30, 1975



Schedule I to the Lease

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Number (Both Inclusive)</u>
General Motors Model SD-40-2, 3000 hp. diesel-electric locomotive.....	18	C&S 950-959 BN 6700-6707
General Electric Company Model U-30-C 3000 hp., diesel-electric locomotive.....	30	BN 5365-5394

Schedule II to the Lease

	Percentage of Purchase Price* of Units
Basic Lease Rate:	
Payments 1-9.....	3.5811%
Payments 10-29.....	6.3600%
_____	<i>6.4682%</i>

* As defined in the Security Document.

Schedule III to the Lease

CASUALTY VALUES

<u>Rental Payment Date</u>	<u>Percentage of Purchase Price*</u>
January 8, 1975	102.000
July 8, 1975	105.936
January 8, 1976	107.980
July 8, 1976	109.756
January 8, 1977	111.265
July 8, 1977	112.528
January 8, 1978	113.501
July 8, 1978	109.350
January 8, 1979	109.895
July 8, 1979	110.227
January 8, 1980	110.441
July 8, 1980	102.804
January 8, 1981	99.950
July 8, 1981	96.918
January 8, 1982	93.734
July 8, 1982	85.377
January 8, 1983	81.838
July 8, 1983	78.140
January 8, 1984	74.265
July 8, 1984	70.221
January 8, 1985	66.020
July 8, 1985	61.674
January 8, 1986	57.122
July 8, 1986	52.456
January 8, 1987	47.685
July 8, 1987	42.787
January 8, 1988	37.775
July 8, 1988	32.626
January 8, 1989	27.352
July 8, 1989	21.941
January 8, 1990	16.384
Thereafter	15.000

* As defined in the Security Document.

Annex D
to Conditional Sale Agreements

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 15, 1974 (hereinafter called the Assignment), by and between **TRUST COMPANY FOR USL, INC.**, as Trustee under a Trust Agreement dated as of the date hereof with American Road Equity Corporation (such Trustee being hereinafter called the Lessor or the Vendee) and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as Agent (hereinafter called the Vendor) under a Finance Agreement dated the date hereof with Burlington Northern Inc. (hereinafter called the Lessee) and the Investors referred to therein (hereinafter called the Investors).

WHEREAS, the Vendee and the Lessee are entering into Conditional Sale Agreements dated as of the date hereof (hereinafter collectively called the Security Documents) with **GENERAL ELECTRIC COMPANY** and **GENERAL MOTORS CORPORATION (Electro-Motive Division)**, respectively (hereinafter called the Builders), providing for the sale to the Vendee of such units of railroad equipment (hereinafter called the Units) described in the Annexes thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS, the Lessor and 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 Lessor to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Documents and as an inducement to the Investors to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Documents), the Lessor has agreed 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. Subject to the provisions of Paragraph 10 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Documents, all the Lessor's right, title, 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 Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, liquidated damages, or otherwise (such rentals, profits and other sums 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 Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor 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 Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documents, subject to the limitations contained in the last paragraph of Article 4 of the Security Documents, and any balance shall be paid to, and retained by the Lessor, on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing. If the Vendor shall not receive any rental payment under the first paragraph of Section 2 of the Lease when due, the Vendor shall notify the Lessor at the addresses set forth in the Lease.

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, if any, of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations, if any, of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. To protect the security afforded by this Assignment the Lessor agrees as follows:

(a) The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor 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 Lessor agrees (and the Lessee so recognizes) that any amendment, modification or termination thereof without such consent shall be void.

(b) At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

(c) Should the Lessor fail to make any payment or to do any act which this Assignment requires the Lessor to make or do, then the Vendor, but without obligation so to do, after first making written demand upon the Lessor and affording the Lessor a reasonable period of time within which to make such payment or do such act, but without releasing the Lessor from any obligation hereunder, may make or do the same in such manner and to such extent as the Vendor may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also the right to perform and discharge each and every obligation, covenant and agreement of the Lessor contained in the Lease; and in exercising any such powers, the Vendor may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Lessor will reimburse the Vendor for such costs, expenses and fees.

4. The Lessor does hereby appoint the Vendor the Lessor's true and lawful attorney, irrevocably, with full power (in the name of the

Lessor, 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 Lessor 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 the Lessee's and the Lessor's obligations under the Security Documents, 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 Lessor.

6. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interests 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 Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Lessor 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 at its address set forth in Article 22 of the Security Documents, or at such other address as the Vendor shall designate.

10. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no Event of Default under the Lease or no event of default under the Security Documents has occurred and is then

continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

11. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) the terms of this Assignment shall not impose any obligations on the Lessor in addition to the obligations of the Lessor under the Lease or under the Security Documents or in any way limit the effect of Article 4 of the Security Documents, the last two paragraphs of Article 23 of the Security Documents or Section 23 of the Lease, (b) the terms of this Assignment shall not limit or in any way affect the Lessor's right to receive and collect any Payments under the Lease in excess of the obligations of the Lessor under the Security Documents as long as there is no event of default under the Security Documents and to the extent the Vendor does not seek to receive and collect such excess amounts, or empower the Vendor in any way to waive or release the Lessee's obligation to pay such excess amounts, and the Lessor shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts and (c) each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by Trust Company for USL, Inc., or for the purpose or with the intention of binding said Trust Company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Assignment is executed and delivered by the said Trust Company solely in the exercise of the powers expressly conferred upon the said Trust Company as trustee under said Trust Agreement, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said Trust Company except for willful misconduct or gross negligence, or the Beneficiary under such Trust Agreement or on account of any representation, undertaking or agreement of the Lessor or such Beneficiary, 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 any of it, making claim hereunder, may look to said Trust Estate for 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.

TRUST COMPANY FOR USL, INC.,
as Trustee,

By
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Agent,

By
Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of September 15, 1974.

BURLINGTON NORTHERN INC.

By.....
Vice President