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~~INTERSTATE COMMERCE COMMISSION~~

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CONDITIONAL SALE AGREEMENT

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Dated as of September 1, 1973

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among

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GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION),

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SOCIETY NATIONAL BANK OF CLEVELAND

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and

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BURLINGTON NORTHERN INC.

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AGREEMENT AND ASSIGNMENT

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Dated as of September 1, 1973

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between

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GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION)

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and

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FIRST SECURITY BANK OF UTAH, N.A., as Agent

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1973,	73
among the corporation named in Item 1 of Annex A hereto	74
(hereinafter called the Vendor or Builder as more particularly	75
set forth in Article 25 hereof), SOCIETY NATIONAL BANK OF	76
CLEVELAND (hereinafter called the Vendee) and BURLINGTON NORTHERN	77
INC. (hereinafter called the Guarantor or the Lessee).	78
WHEREAS, the Builder agrees to construct, sell and deliver to	85
the Vendee, and the Vendee agrees to purchase, the railroad	86
equipment delivered and accepted on or prior to December 31,	87
1973, and described in Annex B hereto (hereinafter called the	89
Equipment); and	90
WHEREAS, the Vendee is executing a lease of the Equipment as	93
of the date hereof to the Lessee in substantially the form	
annexed hereto as Annex D (hereinafter called the Lease) and the	94
Vendee is assigning for security purposes its rights in, to and	
under the Lease to the assignee referred to in the thirteenth	95
paragraph of Article 4 hereof pursuant to an Assignment of Lease	96
and Agreement dated as of the date hereof in substantially the	97
form annexed here to as Annex E; and	98
WHEREAS, the Guarantor is willing to guarantee to the Vendor	100
the due and punctual payment of all sums payable by, and the due	102
and punctual performance of all other obligations of, the Vendee	103
under this Agreement and has joined in this Agreement for the	
purpose of setting forth the terms and conditions of such	104
guaranty and making certain further agreements as hereinafter set	105
forth;	
NOW, THEREFORE, in consideration of the mutual promises,	107
covenants and agreements hereinafter set forth, the parties	108
hereto do hereby agree as follows:	
ARTICLE 1. <u>Incorporation of Model Provisions.</u> Whenever this	111
Agreement incorporates herein by reference, in whole or in part	112
or as hereby amended, any provision of the document entitled	113
"Model Conditional Sale Provisions for Lease Transactions"	114
annexed to this Agreement as Part I of Annex C hereto	115
(hereinafter called the Model CSA Provisions), such provision of	117
the Model CSA Provisions shall be deemed to be a part of this	118
instrument as fully to all intents and purposes as though such	119
provision had been set forth in full in this Agreement.	
ARTICLE 2. <u>Construction and Sale.</u> Article 2 of the Model	121
CSA Provisions is herein incorporated as Article 2 hereof.	122

ARTICLE 3. Inspection and Delivery. Article 3 of the Model CSA Provisions is hereby amended by inserting, in lieu of the words "delivered, accepted" in the second line of the third paragraph thereof, the phrase "delivered and accepted on or before December 31, 1973". Article 3 of the Model CSA Provisions, as so amended, is herein incorporated as Article 3 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Guarantor. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 4) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 4) for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$4,029,721.50 (or such higher amount as the Vendee and the Guarantor may at their option agree to), the Builder (and any assignee of the Builder) and the Guarantor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than \$4,029,721.50 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this Agreement from the Builder for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Builder and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Vendee on or prior to December 31, 1973, as is specified in Item 2 of Annex A hereto (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean such date (after September 1, 1973, and before January 31, 1974, such later date being herein called the Cut-Off Date), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for such Group and written notice thereof by the Builder to the Vendor and the Guarantor as shall be fixed by the Guarantor by written notice delivered to the Vendee and the Vendor at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other days on which banking institutions in Salt Lake City,

Utah or New York, New York are authorized or obligated to remain closed. 177

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows: 179
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(a) On the Closing Date with respect to each Group, (i) an amount equal to 24.0593% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 75.9407% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$3,060,198.72 and any amount previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and 184
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(b) In 30 consecutive semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Prices of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph. 193
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The instalments of the Conditional Sale Indebtedness shall be payable on each January 3 and July 3, commencing July 3, 1974, to and including January 3, 1989 (or, if any such date is not a business day, on the immediately preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred. The Commitment Fee (as hereinafter defined) shall be payable on the Commitment Fee Payment Date (as hereinafter defined). Interest shall be payable on January 3, 1974, the Takeout Date (as hereinafter defined) and each Payment Date thereafter as follows: 200
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(i) On January 3, 1974, for each day elapsed from such Closing Date to and including January 3, 1974, at a rate or rates computed as follows: (a) the rate or rates per annum computed on a daily basis on each day equal to the higher of either (x) 1% above the prime rate (computed on the basis of a 360-day year on the actual number of days elapsed) charged by The Chase Manhattan Bank, N.A., in New York on the Closing Date and as such prime rate is adjusted thereafter, or (y) the rate equal to 1/2 of 1% above the average of the rates for 90-to 119-day prime commercial paper placed through dealers as quoted weekly by the Federal Reserve Bank of New 215
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York (such rate being hereinafter called the Interim Rate)	224
(b) divided by 360, and	225
(ii) On the date (which date shall occur after all	228
Groups of the Equipment have been settled for and on or after	229
January 3, 1974, but on or before July 3, 1974) upon which	231
the Investors (as defined in Section 19 of the Lease) acquire	233
through the Vendor the interests of the Vendor in and under	
this Agreement (such date being herein called the Takeout	234
Date) (a) with respect to each unit of the Equipment settled	235
for prior to January 3, 1974, for each day, if any, elapsed	236
from January 3, 1974, to and including the Takeout Date, at a	237
rate equal to the Interim Rate divided by 360 and (b) with	238
respect to each unit of the Equipment settled for on or after	
January 3, 1974, for each day, if any, elapsed from the	239
Closing Date with respect to such unit to and including the	240
Takeout Date, at a rate equal to the Interim Rate divided by	241
360, and	
(iii) On the earlier of (a) the final Closing Date for	244
any units of the Equipment or (b) January 31, 1974 (said date	246
being hereinafter referred to as the Commitment Fee Payment	
Date), for each day elapsed from October 2, 1973, to and	247
including the Commitment Fee Payment Date, at a rate equal to	248
1/2 of 1% divided by 360 applied to (a) \$3,060,198.72 for the	249
period up to and including the first Closing Date for any	250
units of the Equipment hereunder and (b) the portion, if any,	251
of said \$3,060,198.72 which is not applied on said first	252
Closing Date pursuant to Section 5 of the Assignment, for the	253
period from said first Closing Date up to and including any	254
second (and final) Closing Date (the aggregate amount as so	255
computed being hereinafter called the Commitment Fee), the	256
Commitment Fee to be payable on the Commitment Fee Payment	
Date whether or not any Closing Dates have occurred prior to	257
or on the Commitment Fee Payment Date, and	258
(iv) On July 3, 1974, in the event that the Takeout Date	261
occurs before July 3, 1974, for each day elapsed from the	
Takeout Date to and including said July 3, 1974, at a rate	263
equal to the Long Term Rate as hereinafter described, divided	
by 360, and	
(v) on each Payment Date after July 3, 1974, for each	265
preceding semi-annual period, at a rate per annum equal to	266
the Long Term Rate.	267
The Long Term Rate shall be the rate of interest per annum	269
paid to the Investors (as defined in Section 19 of the Lease).	270
The term "CSA Rate" will refer to the interest rate per annum	272
payable on the unpaid balance of the Conditional Sale	273

Indebtedness at any point in time, whether the Interim Rate or the Long Term Rate. 274

The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated so that the aggregate of the principal and interest payable on each of such Payment Dates shall be substantially equal, except that the instalment of principal and interest payable on July 3, 1974 shall be calculated so that 276
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(i) the principal portion payable on such date will be an amount that would be amortized on such date to achieve level payments of principal and interest on all Payment Dates assuming, hypothetically, that the Long Term Rate was utilized in such determination on all Payment Dates and 282
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(ii) the interest portion will be determined based upon the Interim Rate in accordance with clauses (ii) and (iv) of the fourth paragraph of this Article 4. 286
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Such instalments of principal will completely amortize 100% of the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor and the Guarantor promptly after the Long Term Rate is determined a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date after July 3, 1974 and the amount of principal payable on July 3, 1974. 290
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Interest under this Agreement shall be determined, except to the extent otherwise specifically provided, on the basis of a 360-day year of twelve 30-day months. 299
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Notwithstanding the foregoing, in the event that on or before June 1, 1974 the conditions set forth in either clause (a) or clause (b) of Section 19 of the Lease have not been met, then the entire unpaid balance of the Conditional Sale Indebtedness shall become due and payable on July 3, 1974. 303
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All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in the next preceding paragraph and in Article 7 hereof, there shall exist no privilege or duty to prepay any portion of the Conditional Sale Indebtedness prior to the date it becomes due. 310
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The Vendee will pay interest, to the extent legally enforceable, at the rate of 1% per annum above the CSA Rate (such rate being hereinafter referred to as the Overdue Rate) upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, or at such lesser rate as 316
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shall be legally enforceable, anything herein to the contrary notwithstanding. 321

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and FIRST SECURITY BANK OF UTAH, N.A., as Agent, (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 25 hereof). 324
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It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date in respect of any Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of the third paragraph of this Article 4 with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived): 334
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(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 4 and in Section 5 of the Assignment and the documents required by Section 5 of the Assignment shall have been delivered; 344
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(b) no event of default of the Guarantor specified herein or Event of Default of the Lessee under the Lease, nor any event which with lapse of time and/or demand provided for herein or in the Lease could constitute such an event of default or Event of Default, shall have occurred and be continuing; and 348
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(c) the Vendee shall have received the opinion of counsel required by Section 15 of the Lease and such other documents as the Vendee may reasonably request. 354
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Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to Article 20 hereof and pursuant to subparagraph (a) of the third paragraph of Article 4 hereof, shall not exceed an amount equal to, and shall be payable only 357
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out of, the "income and proceeds from the Equipment", and such 365
 payments shall be made by the Vendee only to the extent that the
 Vendee or the Assignee shall have actually received sufficient 366
 "income or proceeds from the Equipment" to make such payments. 367
 Except as provided in the next preceding sentence, the Vendor 369
 agrees that the Vendee shall have no personal liability to make
 any payments under this Agreement whatsoever except from the 370
 "income and proceeds from the Equipment" to the extent actually 371
 received by the Vendee or the Assignee. In addition, the Vendor 372
 agrees that the Vendee (i) makes no representation, and is not 373
 responsible for, the due execution, validity, sufficiency or 374
 enforceability of the Lease in so far as it relates to the Lessee
 (or any document relative thereto) or of any of the Lessee's 376
 obligations thereunder and (ii) shall not be responsible for the 377
 performance by the Lessee of any of its agreements,
 representations, indemnities, obligations or other undertakings 378
 under the Lease; it being understood that as to all such matters 379
 the Vendor will look solely to the Vendor's rights under this 380
 Agreement against the Guarantor and the Equipment and to the 381
 Vendor's rights under the Lease against the Lessee and the
 Equipment. As used herein the term "income and proceeds from the 382
 Equipment" shall mean (i) if one of the events of default 384
 specified in Article 16 hereof shall have occurred and while it 385
 shall be continuing, so much of the following amounts as are
 indefeasibly received by the Vendee or the Assignee at any time 386
 after any such event and during the continuance thereof: (a) all 388
 amounts of rental and amounts in respect of Casualty Occurrences
 (as hereinafter defined in Article 7 hereof) paid for or with 390
 respect to the Equipment pursuant to the Lease and (b) any and
 all payments or proceeds received by the Vendee or the Assignee 391
 for or with respect to the Equipment as the result of the sale,
 lease or other disposition thereof and after deducting all costs 392
 and expenses of such sale, lease or other disposition and any and 393
 all other payments received by the Vendee or the Vendor under
 Section 10 of the Lease, and (ii) at any other time only that 394
 portion of the amounts referred to in the foregoing clauses (a)
 and (b) as are indefeasibly received by the Vendee or the 395
 Assignee and as shall equal the portion of the Conditional Sale 396
 Indebtedness (including prepayments thereof required in respect 397
 of Casualty Occurrences) and/or interest thereon due and payable 398
 on, or within six days after, the date such amounts received by 399
 the Vendee or the Assignee were required to be paid to it 400
 pursuant to the Lease or as shall equal any other payments then 401
 due and payable under this Agreement; it being understood that 402
 "income and proceeds from the Equipment" shall in no event 403
 include amounts referred to in the foregoing clauses (a) and (b)
 which were received by the Vendee or the Assignee prior to the 404
 existence of such an event of default which exceeded the amounts 405
 required to discharge that portion of the Conditional Sale 406
 Indebtedness (including prepayments thereof required in respect 407
 of Casualty Occurrences) and/or interest thereon due and payable 408
 on, or within six days after, the date on which amounts with 409

respect thereto received by the Vendee or the Assignee were 409
 required to be paid to it pursuant to the Lease or which exceeded 410
 any other payments due and payable under this Agreement at the 411
 time such amounts were payable under the Lease. It is further 412
 specifically understood and agreed that nothing contained herein 413
 limiting the liability of the Vendee shall derogate from the 414
 right of the Vendor to proceed against the Equipment or the
 Guarantor as provided for herein for the full unpaid Purchase 415
 Price of the Equipment and interest thereon and all other 416
 payments or obligations hereunder. Notwithstanding anything to 417
 the contrary contained in Article 16 hereof, the Vendor agrees 418
 that in the event it shall obtain a judgment against the Vendee 419
 for an amount in excess of the amounts payable by the Vendee
 pursuant to the limitations set forth in this paragraph, it will, 421
 accordingly, limit its execution of such judgment to amounts
 payable pursuant to the limitations set forth in this paragraph. 422

ARTICLE 5. Title to the Equipment. Article 5 of the Model 425
 CSA Provisions is herein incorporated as Article 5 hereof. 426

ARTICLE 6. Taxes. Article 6 of the Model CSA Provisions is 429
 herein incorporated as Article 6 hereof.

ARTICLE 7. Maintenance and Repair; Casualty Occurrences; 431
Insurance. Article 7 of the Model CSA Provisions is herein 433
 incorporated as Article 7 hereof.

ARTICLE 8. Obligations of Guarantor. In addition to the 436
 obligations the Guarantor agrees to assume under Article 15
 hereof upon the happening of the occurrence referred to therein, 437
 the Guarantor, for value received, hereby absolutely and 439
 unconditionally guarantees to the Vendor by endorsement (through
 its execution hereof) the due and punctual payment of that 440
 portion of the Purchase Price of the Equipment payable pursuant 441
 to subparagraph (b) of the third paragraph of Article 4 hereof
 and interest thereon, and the due and punctual performance of all 442
 obligations of the Vendee under this Agreement and 443
 unconditionally guarantees to the Vendor that all sums payable by
 the Vendee under this Agreement (except for the sums payable by 444
 the Vendee pursuant to subparagraph (a) of the third paragraph of
 Article 4 hereof) will be promptly paid when due, together with 445
 interest thereon as herein provided, whether at stated maturity 446
 or by declaration or otherwise, and in case of default by the 447
 Vendee in any such obligations or payments the Guarantor agrees 448
 punctually to perform or pay the same, irrespective of any 449
 enforcement against the Vendee of any of the rights of the Vendor
 hereunder.

The Guarantor hereby agrees that its obligations hereunder 451
 shall be unconditional (and shall not be subject to any defense, 453
 setoff, counterclaim or recoupment whatsoever), irrespective of 454
 the genuineness, validity, regularity or enforceability of this

Agreement or any other circumstance which might otherwise 455
 constitute a legal or equitable discharge of a surety or 456
 guarantor and irrespective of the last paragraph of Article 4
 hereof or any other circumstances (including an assignment by the 458
 Vendor of all its right, title and interest under this Agreement 459
 to a person designated by the Vendee pursuant to the provisions
 of the ninth paragraph of Article 17 hereof) which might 461
 otherwise limit the recourse of the Vendor to the Vendee. The 462
 Guarantor hereby waives diligence, presentment, demand of
 payment, protest, any notice of any assignment hereof in whole or 463
 in part or of any default hereunder and all notices with respect 464
 to this Agreement and all demands whatsoever hereunder. No 465
 waiver by the Vendor of any of its rights hereunder and no action 466
 by the Vendor to enforce any of its rights hereunder or failure 467
 to take, or delay in taking, any such action shall affect the 468
 obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to 470
 the Vendor on account of its guaranty hereunder, the Guarantor 472
 hereby covenants and agrees that it shall not acquire any rights
 of recourse against the Vendee, any rights of subrogation to the 474
 rights of the Vendor or any other rights whatsoever against the 475
 Vendee or with respect to any of the units of the Equipment by 476
 reason of such payments, all such rights being hereby irrevocably 477
 released, discharged and waived by the Guarantor; provided, 478
however, that after the payment by the Guarantor to the Vendor of
 all sums payable under this Agreement, the Guarantor shall, by 479
 subrogation, be entitled to the rights of the Vendor against the
 Vendee by reason of such payment, to the extent, but only to the 480
 extent, that the Vendee has received "income and proceeds from 481
 the Equipment" (as defined in Article 4 hereof) and has not 482
 applied amounts equal to such income and proceeds to the payment, 483
 in accordance with this Agreement and subject to the limitations
 contained in the last paragraph of said Article 4, of sums 484
 payable by the Vendee to the Vendor hereunder.

ARTICLE 9. Reports and Inspections. On or before October 1 487
 in each year, commencing with the year 1974, the Vendee shall 488
 cause to be furnished to the Vendor an accurate statement (a) 489
 setting forth as of the preceding July 3 the amount, description 490
 and numbers of the Equipment then covered hereby, the amount, 491
 description and numbers of all units of the Equipment that have
 suffered a Casualty Occurrence during the preceding 12 months (or 493
 since the date of delivery hereunder of the Equipment, in the
 case of the first such statement) and such other information 494
 regarding the condition and state of repair of the Equipment as 495
 the Vendor may reasonably request and (b) stating that, in the 497
 case of all Equipment repaired or repainted during the period
 covered by such statement, such Equipment is marked as required 498
 by Article 10 hereof. The Vendor shall have the right, by its 499
 agents, to inspect the Equipment and the Guarantor's records with 500

respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.	501 502
ARTICLE 10. <u>Marking of Equipment</u> . Article 10 of the Model CSA Provisions is herein incorporated as Article 10 hereof.	504 505
ARTICLE 11. <u>Compliance with Laws and Rules</u> . Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.	507 508
ARTICLE 12. <u>Possession and Use</u> . Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.	511
ARTICLE 13. <u>Prohibition Against Liens</u> . Article 13 of the Model CSA Provisions is herein incorporated as Article 13 hereof.	514
ARTICLE 14. <u>Indemnities and Warranties</u> . Article 14 of the Model CSA Provisions is herein incorporated as Article 14 hereof.	518
ARTICLE 15. <u>Assignments</u> . Article 15 of the Model CSA Provisions is herein incorporated as Article 15 hereof, except that the following shall be added at the end of the first sentence of the first paragraph of said Article 15 of the Model CSA Provisions:	522 523 524
"; <u>provided, however</u> , that, if such sale, assignment, transfer or disposition is made by the Vendee to the Guarantor in accordance with Section 19 of the Lease because the conditions set forth in said Section 19 are not fulfilled, the Guarantor expressly assumes all of the obligations of the Vendee under this Agreement and acknowledges that such sale, assignment, transfer or disposition is expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Guarantor in its capacity as Guarantor under this Agreement and as successor to the Vendee)."	527 528 529 530 531 532 533 534
ARTICLE 16. <u>Defaults</u> . Article 16 of the Model CSA Provisions is hereby amended by (a) inserting the number "35" in lieu of the number "30" in the second line of subparagraph (b) of the first paragraph thereof and (b) inserting the phrase "or an Event of Default shall occur under the Lease" after the word "hereof" in the third line of subparagraph (f) of the first paragraph thereof. Article 16 of the Model CSA Provisions, as so amended, is herein incorporated as Article 16 hereof.	538 539 540 542 543 544
ARTICLE 17. <u>Remedies</u> . Article 17 of the Model CSA Provisions is herein incorporated as Article 17 hereof, except that the following paragraph shall be added immediately after the eighth paragraph thereof:	549 550 551

"At any time during the continuance of a Declaration of Default due to an event of default occasioned by an act or omission of the Guarantor hereunder or attributable to the Lessee under the Lease, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Vendee or the Guarantor or by commencement of the remedies specified in this Article 17 that it will not rescind such Declaration of Default, the Vendor, upon payment to it of an amount equal to the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, shall enter into an appropriate agreement assigning to any person designated by the Vendee all the Vendor's right, title and interest in and to the Equipment and under this Agreement."	553 554 555 556 557 558 560 561 562 563 564 565
ARTICLE 18. <u>Applicable State Laws</u> . Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.	569
ARTICLE 19. <u>Recording</u> . Article 19 of the Model CSA Provisions is hereby amended by inserting after the word "Act" in the fifth line thereof the phrase "and to be deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in <u>The Canada Gazette</u>) pursuant to Section 86 of the Railway Act of Canada". Article 19 of the Model CSA Provisions, as so amended, is herein incorporated as Article 19 hereof.	573 574 575 576 577 578
ARTICLE 20. <u>Payment of Expenses</u> . Article 20 of the Model CSA Provisions is herein incorporated as Article 20 hereof.	582
ARTICLE 21. <u>Article Headings; Effect and Modification of Agreement</u> . Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.	585 586
ARTICLE 22. <u>Notice</u> . Any notice or demand hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:	590 591
(a) to the Vendee, at 127 Public Square, Cleveland, Ohio 44114, attention of Vice President,	594
(b) to the Guarantor, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention of Assistant Vice President, Financial Planning Division,	597
(c) to the Builder, at the address set forth in Item 1 of Annex A hereto, and	600

(d) to any assignee of the Vendor or of the Vendee, at 603
such address as may have been furnished in writing to the
Vendee or the Vendor, as the case may be, and to the 604
Guarantor, by such assignee,

or at such other address as may have been furnished in writing by 606
such party to the other parties to this Agreement. 607

ARTICLE 23. Immunities; Satisfaction of Undertakings. No 611
recourse shall be had in respect of any obligation due under this 612
Agreement, or referred to herein, against any incorporator, 613
stockholder, director or officer, past, present or future, of the 614
Vendee, the Guarantor or the Builder (or Vendor), whether by 615
virtue of any constitutional provision, statute or rule of law,
or by enforcement of any assessment or penalty or otherwise, all 617
such liability, whether at common law, in equity, by any
constitutional provision, statute or otherwise, of such 618
incorporators, stockholders, directors or officers being forever
released as a condition of and as consideration for the execution 619
of this Agreement.

The obligations of the Vendee under the first paragraph of 621
Article 7 and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof 622
shall be deemed in all respects satisfied by the Lessee's 623
undertakings contained in Sections 5, 6, 8, 9, 12 and 16 of the 624
Lease. The Guarantor shall be liable in respect of its guaranty 625
hereunder for such obligations under said Articles hereof
regardless of whether or not the Lease provides for the discharge 626
of such obligations or is in effect. The Vendee shall not have 627
any responsibility for the Lessee's failure to perform such
obligations, but if the same shall not be performed they shall 628
constitute the basis for an event of default hereunder pursuant 629
to Article 16 hereof. No waiver or amendment of the Lessee's 630
undertakings under the Lease shall be effective unless joined in
by the Vendor.

ARTICLE 24. Law Governing. Article 24 of the Model CSA 634
Provisions is herein incorporated as part of Article 24 hereof;
the term "Selected Jurisdiction" as used therein shall mean the 635
State of Ohio, and the Vendee warrants that its chief place of 636
business and chief executive office are in the State of Ohio. 637

ARTICLE 25. Definitions. Article 25 of the Model CSA 641
Provisions is herein incorporated as Article 25 hereof.

ARTICLE 26. Execution. This Agreement may be executed in 645
any number of counterparts, each of which so executed shall be 646
deemed to be an original, and such counterparts together shall
constitute but one and the same contract, which shall be 648
sufficiently evidenced by any such original counterpart.
Although this Agreement is dated as of September 1, 1973, for 649
convenience, the actual date or dates of execution hereof by the 650

parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed. 651

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written. 657
658

GENERAL MOTORS CORPORATION 661
(ELECTRO-MOTIVE DIVISION) 662

by Harold Z Smith 665
Vice President 666

[CORPORATE SEAL] 667

Attest: W R Thomas 669
Assistant Secretary 671
672

SOCIETY NATIONAL BANK OF 676
CLEVELAND 677

by Earl C. Woodburn 680
Vice President 681

[CORPORATE SEAL] 682

Attest: John S. [Signature] 684
~~Assistant Secretary~~ 686
687

BURLINGTON NORTHERN INC., 691

by Frank H Coyne 694
Vice President 695

[CORPORATE SEAL] 696

Attest: [Signature] 698
~~Assistant Secretary~~ 700
701



STATE OF ILLINOIS) 706
) 707
 COUNTY OF COOK) 708

On this *2nd* day of ~~October~~ *November*, 1973, before me personally appeared HAROLD L. SMITH, to me personally known, who, being by me duly sworn, says that he is a Vice President of of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), 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. 712
 713
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Zula C. Clair

 Notary Public 723
 724

[NOTARIAL SEAL] 728

My Commission expires ~~JULY~~ *JULY* 11, 1976 731

STATE OF OHIO) 735
) ss.: 736
 COUNTY OF CUYAHOGA) 737

On this *5th* day of ~~October~~ *November*, 1973, before me personally appeared *IAD C.P. Woodburn*, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOCIETY NATIONAL BANK OF CLEVELAND, 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. 740
 741
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 744
 745
 746
 747

Gerald A. Buck

 Notary Public 750
 751

[NOTARIAL SEAL] 754

My Commission expires 756

GERALD A. BUCK, Notary Public
 CUYAHOGA COUNTY, OHIO
 My commission expires Oct. 18, 1976



STATE OF MINNESOTA)

759

) ss.:

760

COUNTY OF RAMSEY)

761

November

On this *3rd* day of ~~October~~, 1973, 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.

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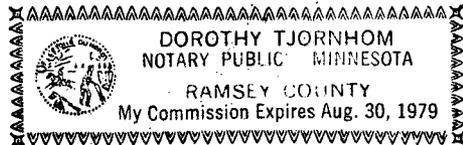
Dorothy Tjornhom
Notary Public

774

775

[NOTARIAL SEAL]

My Commission expires



778

780

ANNEX A - G. M.

	2
Item 1: General Motors Corporation (Electro-Motive Division), LaGrange, Illinois 60525.	5 6
Item 2: The Equipment shall be settled for in not more than two Groups.	9
Item 3: The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called the Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this warranty.	11 12 13 14 15 16 17 18 19 20 22 23 25 26
The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder.	29 30 31
There are no warranties with respect to material and workmanship, expressed or implied, made by the Builder except the warranties set out above.	34 36
Notwithstanding anything to the contrary contained in the Agreement, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.	39 40 41 42 43
The Builder reserves the right to make changes in the design of, or add any improvements to, units of the Equipment at any time without incurring any obligation to make similar changes or additions in respect of units of the Equipment previously delivered to the Vendee.	46 48 49 50
The Builder further agrees with the Vendee and the Guarantor that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a	53 54 56 57

	modification by the Vendee or the Guarantor of any of its or their rights under this Item 3.	58
Item 4:	Except to the extent the Builder is obligated under the Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Builder under the Agreement, the Guarantor agrees to indemnify, protect and hold harmless each such assignee from and against any and all liability, claims, demands, cost, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each such assignee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.	61 62 63 64 65 66 67 68 69
	The Builder shall defend any suit or proceeding brought against the Vendee, the Guarantor and/or each assignee of the Builder's rights under this Agreement so far as the same is based on a claim that the Equipment of Builder's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Vendee, the Guarantor and/or any such assignee.	72 73 74 75 76 77 80 81
	In case any unit of the Equipment or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Builder shall at its option and at its own expense either procure for the Vendee, the Guarantor and any such assignee the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement or modify it so it becomes non-infringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of the Agreement.	84 85 87 88 89 90 92 93 94 96 97 98 99
	The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.	102 103 104

The foregoing states the entire liability of the
Builder for patent infringement by the Equipment or any
part thereof.

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ANNEX B--G.M.

<u>Type</u>	<u>Builder's Specifications and AAR Designation</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Time and Place of Delivery</u>
Model SD-40-2 locomotives	8087, dated August 2, 1973 (AAR Designation 0-6-6-0)	McCook, Illinois	10	6824-6833	\$383,783	\$3,837,830	November-December 1973, at Cicero, Ill.

MODEL PROVISIONS

**PART I -MODEL CONDITIONAL SALE PROVISIONS
FOR LEASE TRANSACTIONS**

PART II -MODEL LEASE PROVISIONS

**PART III -MODEL ASSIGNMENT PROVISIONS FOR
LEASE TRANSACTIONS**

**MODEL CONDITIONAL SALE PROVISIONS FOR
LEASE TRANSACTIONS**

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Annex A hereto) will be new railroad equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clauses (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with a lapse of time and/or demand could constitute such an event of default, shall have occurred.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to

acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded resulted from one or more of the causes set forth in the immediately preceding paragraph, the Guarantor shall be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Guarantor shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Guarantor shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Guarantor) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Guarantor) shall execute and deliver to the Builder a certificate of acceptance

(hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Guarantor as provided in this Agreement. Any and all additions to the Equipment (except, in the case of any unit of the Equipment 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 Guarantor, 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 of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property

in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment.

delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security title of the Vendor in and to any of the Equipment or its interests or rights under this Agreement or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it or the Lessee is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title, interests, or rights of the Vendor in or to the Equipment or under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee agrees that it will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Guarantor, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on principal of the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the

Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance required by the fifth paragraph of this Article 7 shall be applied on the Casualty Payment Date that such Casualty Value is paid to prepay the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Guarantor will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained for the benefit of the

Vendor and the Vendee public liability insurance and insurance in respect of the Equipment at the time subject hereto, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Guarantor on equipment owned by it. Such insurance shall be payable to the Vendor, the Vendee and the Guarantor as their interests may appear.

It is further understood and agreed that any insurance proceeds received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article 7. If the Vendor shall receive any other insurance proceeds in respect of insurance carried in respect of such units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article 7 without deduction for such insurance proceeds, the Vendor shall pay such insurance proceeds to the Vendee. All proceeds of insurance received by the Vendor in respect of insurance carried on any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 9. Reports and Inspections. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Guarantor's records with respect thereto

at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, 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 name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interests in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia of the Vendee and/or the Guarantor or its affiliates.

ARTICLE 11. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may

extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any unit of the Equipment, the Vendee will conform therewith, at its own expense; provided, however, that the Vendee or 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 Vendor, adversely affect the security title of the Vendor in and to any of the Equipment or its interests or rights under this Agreement.

ARTICLE 12. Possession and Use. The Vendee, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to the possession and use of the Equipment.

The Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement to the same extent as the rights of the lessee are subordinated pursuant to this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving

the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 13. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless 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, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains in the Vendor or the transfer

of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreements of the parties relating to the Builder's warranty of material and workmanship and relating to patent indemnification are set forth in Annex A hereto.

ARTICLE 15. Assignments. The Vendee will not (a) except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, all rights and remedies against the Vendee and the Guarantor) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Vendee or the Guarantor of their respective obligations to the Builder contained in

Articles 2, 3, 4, 6, 8 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Guarantor under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or

the Guarantor, as the case may be, against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, if necessary upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Guarantor and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee and the Guarantor will (a) in connection with each settlement for the Equipment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive on the Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Vendee and the Guarantor of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received, and the Guarantor will, not later than 90 days after such Closing Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the highest prime rate of interest of leading New York City banks in effect on such Closing Date.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 15 days; or

(b) The Vendee or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Guarantor 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 Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Vendee or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee or the

Guarantor under this Agreement), 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 Vendee or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Guarantor, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under the Other Agreement or Agreements, if any, referred to in Article 4 hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 12 hereof, cause the Lease (or any other lease of the Equipment entered into by the Vendee) immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due

and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee or the Guarantor wherever situated. The Vendee or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease (or any other lease of the Equipment entered into by the Vendee) by notice to the Vendee and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 12 hereof and to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Guarantor or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies,

services and aids and any available trackage and other facilities or means of the Vendee or the Guarantor.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall (subject to the rights of the Lessee set forth in Article 12 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Guarantor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Guarantor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Guarantor requiring specific performance hereof. The Vendee and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second

proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title, to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Guarantor or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Guarantor and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 12 hereof, sell the Equipment, or one or more the units thereof, free from any and all claims of the Vendee, the Guarantor or any other party claiming from, through or under the Vendee or the Guarantor at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and

unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendee and the Guarantor shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Vendee and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee and the Guarantor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and

simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Guarantor shall not otherwise alter or affect the Vendor's rights or the Vendee's or the Guarantor's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or the Guarantor, as the case may be, to the extent of their respective interests therein.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. The Vendee or the Guarantor will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee and the Guarantor will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee and the Guarantor will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first

assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Vendee and the Guarantor.

ARTICLE 24. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Selected Jurisdiction; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both

before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

MODEL LEASE PROVISIONS

§ 2. 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 on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with § 5 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.

§ 5. Identification Marks. The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A 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 name of the Vendor followed by the words "Agent, Security Owner" 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 Lessor's and Vendor's title to and property in such Unit and the rights of the Lessor under this Lease and of the Vendor under the Security Documents. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace promptly any markings which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement

previously 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 Units may be lettered with the names or initials or other insignia of the Lessee or its affiliates.

§ 6. Taxes. All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor 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 or gross receipts taxes [other than gross receipts taxes in the nature of sales or use taxes], up to the amount of any such taxes which would be payable to the state and city in which the Lessor 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 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 such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), 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 in and to any Unit or its interests or rights under this Lease; 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, interests or rights of the Lessor in and to any of the Units or under this Lease or the Security Documents. 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 Article 6 of the Security Documents not covered by the foregoing paragraph of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

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 § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 8. Annual Reports. On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Lease, the Lessee will furnish to the Lessor and the Vendor an accurate statement (a) setting forth as at 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 during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and Article 10 of the Security Documents have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

§ 9. 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 the provisions of Article 14 of the Security Documents. 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 and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration or replacement of or addition to any Unit, the Lessee will conform therewith, 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 title of the Lessor or the security title of the Vendor in and to any of the Units or their interests or rights under this Lease or under the Security Documents.

The Lessee agrees that it will at all times maintain each Unit in good order and repair at its own expense.

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.

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 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 § 16 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.

§ 11. Return of Units Upon Default. If this Lease shall terminate pursuant to § 10 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. 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 place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate;

(b) permit the Lessor to store such Units on such tracks at the risk of the Lessee 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 § 11, 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.

§ 12. Assignment; Possession and Use. This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 17 hereof and the rights to receive the rentals payable under this Lease) shall inure to the benefit of each beneficiary of the Lessor if the Lessor is a trust and the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each such beneficiary and assignee of the Lessor and, where the context so requires (including, but not limited to, certain of the provisions of § 10 and all of § 17 hereof), shall refer only to each such beneficiary or its assignee.

So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, 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. The Lessee, at its own

expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance created by the Lessor or the Vendor or resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) upon or with respect to any Unit (other than upon or with respect to the leasehold rights of the Lessee hereunder in and to the Units) 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 in its capacity as Guarantor or otherwise, 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 § 12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder 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.

§ 14. Return of Units upon Expiration of Term. As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), 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 as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; 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. 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 Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall elect to abandon, 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 § 7 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence while this Lease is in effect.

§ 15. Opinion of Counsel. On each Closing Date (as defined in the Security Documents), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, 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;

B. the Security Documents and this Lease 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;

C. the Security Documents (and the assignment thereof to the Vendor) and this Lease 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 is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

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

E. 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

F. 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 leasehold rights of the Lessee hereunder in and to the Units.

§ 16. Recording; Expenses. 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. The Lessee will undertake the filing, registering, deposit, 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.

The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

**MODEL ASSIGNMENT PROVISIONS FOR
LEASE TRANSACTIONS**

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all, subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Guarantor thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Guarantor that such filing and recordation have occurred).

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any

provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Guarantor arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Guarantor by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Vendee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Guarantor with respect to

the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 15 of the Conditional Sale Agreement and at least five business days (as defined in the Conditional Sale Agreement) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee the Builder's interests in and to the units of the Equipment in such Group, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) A certificate of an officer of the Guarantor to the effect that none of the units of the Equipment was placed in the service of the Guarantor or otherwise

was used by the Guarantor prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Guarantor as to their approval thereof;

(e) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and, if the Assignee is acting as agent for Investors under a Finance Agreement, the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) any such Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Guarantor under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of any such Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered

pursuant to any such Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors;

(f) An opinion of counsel for the Vendee or the beneficial owner of the Equipment, dated as of such Closing Date, stating that the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(g) An opinion of counsel for the Guarantor, dated as of such Closing Date and addressed to the Vendee as well as the Assignee, to the effect set forth in clauses (i), (ii), (iii), (vi) and (vii) of subparagraph (e) above and stating that the Guarantor is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(h) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder; and

(i) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Date to the Builder

with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (e), (f) and (g), counsel may rely as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder; and, in giving the opinion specified in said subparagraph (e), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel specified in said subparagraphs (f), (g) or (h) as to such matter. In giving the opinions specified in said subparagraphs (f), (g) and (h), counsel may rely, to the extent deemed appropriate by Messrs. Cravath, Swaine & Moore, on the opinion of other counsel.

If the Assignee is acting as agent for Investors under a Finance Agreement, the obligation of the Assignee hereunder to make payment for any Group of Equipment is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clauses (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Guarantor thereunder. 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 Assignee hereunder.

SECTION 7. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Guarantor, the Conditional Sale Agreement is, in so far as the Builder is concerned a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Vendee and the Guarantor, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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LEASE OF RAILROAD EQUIPMENT 14

Dated as of September 1, 1973 16

between 18

SOCIETY NATIONAL BANK OF CLEVELAND 20

and 22

BURLINGTON NORTHERN INC. 24

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**ASSIGNMENT OF LEASE
AND AGREEMENT** 28
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Dated as of September 1, 1973 31

between 33

SOCIETY NATIONAL BANK OF CLEVELAND 35

and 37

**FIRST SECURITY BANK OF UTAH, N.A.,
as Agent** 39
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ANNEX D

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ANNEX D	53
LEASE OF RAILROAD EQUIPMENT dated as of September 1, 1973, between BURLINGTON NORTHERN INC. (hereinafter called the Lessee) and SOCIETY NATIONAL BANK OF CLEVELAND (hereinafter called the Lessor).	56 57 58
WHEREAS, the Lessor and the Lessee have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Security Documents) with GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) (hereinafter called the Builder), wherein the Builder has agreed to manufacture, sell and deliver to the Lessor on or prior to December 31, 1973, the units of railroad equipment described in Schedule A hereto;	60 61 63 64 65 66
WHEREAS, the Builder has assigned or will assign its interest in the Security Documents to FIRST SECURITY BANK of UTAH, N.A., as Agent (hereinafter, together with its successors and assigns, referred to as the Vendor); and	68 69 70 72
WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted on or before December 31, 1973, and settled for under the Security Documents prior to January 31, 1974 (such units being hereinafter called the Units), at the rentals, for the terms and upon the conditions hereinafter provided; and	74 76 77 79
WHEREAS, the Lessee has entered or is entering into a Lease of Railroad Equipment, covering 10 locomotives, with THE FIFTH THIRD LEASING COMPANY and a Lease of Railroad Equipment, covering 25 locomotives, with MERCANTILE TRUST COMPANY, N.A., both of even date hereof (said Leases of Railroad Equipment being hereinafter called the Other Leases);	82 84 86 88 89
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, but, upon default of the Lessee hereunder or under the Security Documents, subject to all the rights and remedies of the Vendor under the Security Documents:	91 92 93 94 95 96
SECTION 1. <u>Incorporation of Model Provisions.</u> Whenever this Lease incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Lease Provisions" annexed to the Security Documents as Part II of Annex C thereto (hereinafter called the Model Lease Provisions), such provision of the Model Lease Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this Lease.	98 99 101 102 103 104 105

SECTION 2. Delivery and Acceptance of Units. Section 2 of the Model Lease Provisions is herein incorporated as Section 2 hereof. 107
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SECTION 3. Rentals. The Lessee agrees to pay to the Lessor, as rental for each Unit subject to this Lease, 31 consecutive semi-annual payments, payable on January 3 and July 3 in each year, commencing with January 3, 1974 (or if any such date is not a business day, on the next preceding business day, as such term is defined in the Security Documents), and the additional payments required to be made in accordance with the provisions below. 112
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(i) The rental payment payable on January 3, 1974, shall be in an amount equal to the Interim Rate (as defined in the Security Documents) divided by 360 multiplied by the Purchase Price (as defined in the Security Documents) of each Unit settled for before January 3, 1974 and then subject to this Lease for each day elapsed from the date such Unit is settled for under the Security Documents to and including January 3, 1974. 124
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(ii) The rental payment payable on July 3, 1974 shall be in an amount equal to 134

(a) the Basic Lease Rate (as hereinafter defined) multiplied by the Purchase Price of each Unit subject to this Lease on July 3, 1974, plus 137
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(b) with respect to 141

(i) each Unit settled for prior to January 3, 1974, for each day elapsed from January 3, 1974 to and including the earlier of the Takeout Date (as defined in the Security Documents) or July 3, 1974, and 143
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(ii) each Unit settled for on or after January 3, 1974 for each day elapsed from the date of settlement with respect to such Unit to and including the earlier of the Takeout Date (as defined in the Security Documents) or July 3, 1974, 149
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the product of (x) the Interim Rate minus the Long Term Rate (as defined in the Security Documents) times (y) 75.9407% (hereinafter called the Debt Percentage) times (z) the Purchase Price of each such Unit, said product divided by 360 (the dollar amount, if said calculation produces a negative number, to be deducted from, rather than added to, the amount calculated under sub-clause (a) above), less 154
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(c) in the event that the Lessee has paid an additional payment of rental in accordance with the second paragraph of this Section 3, the amount of such payment. 165
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(iii) The remaining 29 semi-annual rental payments, commencing January 3, 1975, shall each be in an amount equal to that percentage of the Purchase Price (herein called the Basic Lease Rate) of each Unit subject to this Lease on the rental payment date which is set forth below opposite the Long Term Rate (as defined in the Security Documents) applicable to the Conditional Sale Indebtedness. 168
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<u>Long Term Rate</u>	<u>29 Semi-Annual Payments Commencing January 3, 1975</u>	
7 3/4%	4.32503%	180
7 7/8	4.35827	181
8	4.39166	182
8 1/8	4.42519	183
8 1/4	4.45886	184
8 3/8	4.49267	185
8 1/2	4.52662	186
8 5/8	4.56071	187
8 3/4	4.59495	188

If the Long Term Rate per annum applicable to the Conditional Sale Indebtedness is not expressly set forth above, the percentages of the Purchase Price constituting semi-annual rental payments shall be calculated by interpolating or extrapolating the percentages of the Purchase Price set forth above. 192
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In the event that the Takeout Date (as defined in the Security Documents) occurs prior to July 3, 1974, the Lessee agrees to pay as additional rent on said Takeout Date an amount equal to 199
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(a) with respect to each Unit settled for prior to January 3, 1974, for each day elapsed from January 3, 1974, to and including the Takeout Date, the product of (i) the Interim Rate times (ii) the Debt Percentage times (iii) the Purchase Price of each such Unit, said product divided by 360, plus 205
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(b) with respect to each Unit settled for on or after January 3, 1974, for each day elapsed from the date of settlement with respect to such Unit to and including the Takeout Date, the product of (i) the Interim Rate times (ii) the Debt Percentage times (iii) the Purchase Price of each such Unit, said product divided by 360. 213
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The Lessee shall pay as additional rent 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, an amount equal to the Commitment Fee (as defined in the Security Documents) payable to the Vendor pursuant to Article 4 of the Security Documents. 223
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The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available Salt Lake City or Federal funds (including but not limited to the payments required under Section 7 hereof) for the account of the Lessor, c/o the Vendor, on or before 10 a.m., Salt Lake City time on the date upon which payments are due and payable. With respect to payments made in immediately available funds, the Lessee will instruct the bank transferring said funds on the Lessee's behalf to wire advice of said transfer to First Security Bank of Utah, N.A., to the attention of its Trust Department not later than 10:00 a.m., Salt Lake City time on the rental payment date. With respect to payments made in Federal funds, the Lessee will instruct the bank transferring said funds on the Lessee's behalf to make said transfer to the attention of the Trust Department of First Security Bank of Utah, N.A. 231
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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 of subrogation under Article 8 thereof, or against the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time 248
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hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the Lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever unless such amounts paid by the Lessee hereunder shall be in excess of the amounts actually due and payable pursuant to the terms of this Lease.

SECTION 4. Term of Lease. The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of Sections 7, 10, 13 and 19 hereof, shall terminate on the date on which the final semi-annual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder or under the Security Documents in its capacity as Guarantor, or otherwise, are subject to the rights of the Vendor under the Security Documents. If an event of default should occur under the Security Documents, 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 the Security Documents. If a Declaration of Default (as defined in the Security Documents) should be made under the Security Documents due to an event of default occasioned by an act or omission of the Lessor hereunder or attributable to the Lessor under the Security Documents and not occasioned by an act or omission of the Lessee hereunder nor attributable to the Lessee under the Security Documents as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 17 of such Security Documents that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

SECTION 5. Identification Marks. Section 5 of the Model Lease Provisions is herein incorporated as Section 5 hereof.

SECTION 6. Taxes. Section 6 of the Model Lease Provisions is hereby amended by inserting (i) the word "currently" after the word "Lessor" in the sixth line of the first paragraph thereof, (ii) the phrase "[including interest and penalties thereon or with respect thereto]" after the word "taxes" in the twenty-fourth line of the first paragraph thereof and (iii) the phrase "and at its own cost" after the word "faith" in the thirty-ninth line of the first paragraph thereof. Section 6 of the Model

Lease Provisions, as so amended, is herein incorporated as Section 6 hereof. 320

SECTION 7. Payment for Casualty Occurrences; Insurance. In 324
 the event that any Unit shall be or become worn out, lost,
 stolen, destroyed or, in the opinion of the Lessee, irreparably 325
 damaged, or taken or requisitioned by condemnation or otherwise 326
 rendered permanently unfit from any cause whatsoever (such 327
 occurrences being hereinafter called Casualty Occurrences) during 328
 the term of this Lease, the Lessee shall, within eight days after 329
 it shall have determined that such Unit has suffered a Casualty
 Occurrence, fully notify the Lessor and the Vendor in writing in 330
 regard thereto. On the rental payment date listed on the 331
 schedule set out below next succeeding such notice, the Lessee 332
 shall pay to the Lessor an amount equal to the Casualty Value (as 335
 hereinafter defined) of such Unit together with the rental 336
 payment otherwise due with respect to such Unit as of the date of 337
 such payment in accordance with the schedule set out below. Upon 339
 the making of such payment by the Lessee in respect of any Unit,
 the rental for such Unit shall cease to accrue thereafter, the 340
 term of this Lease as to such Unit shall terminate, and (except 341
 in the case of the loss, theft or complete destruction of the
 Unit) the Lessor shall be entitled to recover possession of such 342
 Unit.

Subject to the provisions of Section 17 hereof, the Casualty 344
 Value of each Unit as of any rental payment date shall be 345
 determined by multiplying the Purchase Price of such Unit by the
 appropriate percentage set forth opposite each date: 346

<u>Rental</u>	<u>Percentage of</u>	<u>Rental</u>	<u>Percentage of</u>	
<u>Payment Date</u>	<u>Purchase Price</u>	<u>Payment Date</u>	<u>Purchase Price</u>	
1/3/74	89.5976%	1/3/82	62.4341%	353
7/3/74	89.5297	7/3/82	59.6065	354
1/3/75	88.7984	1/3/83	56.6810	355
7/3/75	88.0414	7/3/83	53.6573	356
1/3/76	87.0548	1/3/84	50.5438	357
7/3/76	85.8687	7/3/84	47.3378	358
1/3/77	84.4653	1/3/85	44.0502	359
7/3/77	82.8706	7/3/85	40.6759	360
1/3/78	81.1140	1/3/86	37.2285	361
7/3/78	79.1930	7/3/86	33.6968	362
1/3/79	77.1268	1/3/87	30.0968	363
7/3/79	74.9649	7/3/87	26.4174	364
1/3/80	72.6825	1/3/88	22.7011	365
7/3/80	70.2861	7/3/88	18.9841	366
1/3/81	67.7766	1/3/89	15.0000	367
7/3/81	65.1582		and thereafter	368
			15.0000	369

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in Section 10 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>	
Third	13.9885%	374 375 376 377 378 381 382 383 385
Fifth	9.3257%	387
Seventh	4.6623%	389

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

The Lessee will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained insurance in respect of the Units at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in an amount and against risks comparable to those insured against by the Lessee on equipment owned by it and the benefits thereof shall be payable as provided in the Security Documents. Any damages receivable from others, any condemnation payments and any net insurance proceeds in respect of insurance carried by the Lessee received by the Lessor in respect of Units suffering a Casualty Occurrence (all hereinafter collectively referred to as Recoveries) shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 7. The excess of such damages received from others, or insurance proceeds or condemnation payments, if any, after deduction of such payments received from the Lessee in respect of Casualty Occurrences, shall belong to the Lessor. If the Lessor shall receive any such Recoveries after the Lessee shall have made payments pursuant to this Section 7 without deduction for such Recoveries, the Lessor shall pay such Recoveries 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 Recoveries (except any balance of net insurance proceeds which shall be paid to the Lessee) shall remain the property of the Lessor.

All proceeds of insurance received by the Lessor in respect of insurance carried on any Unit or Units not suffering a Casualty Occurrence shall be paid to the Lessee upon proof satisfactory to the Lessor that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

SECTION 8. Annual Reports. On or before October 1 in each year, commencing with the year 1974, the Lessee shall furnish to the Lessor and the Vendor an accurate statement (a) setting forth as of the preceding July 3 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 during the preceding 12 months (or since the date of this Lease, in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and the markings required by Section 5 hereof and Article 10 of the Security Documents have been preserved or replaced. The Lessor shall have the right, by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Agreement.

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

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

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

B. the Lessee shall make or suffer any unauthorized assignment or transfer of this Lease or of possession, or right 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, representations, warranties and agreements on the part of the Lessee contained herein or in the Security Documents and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77

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

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

F. an Event of Default shall occur under the Other Leases, then, in any such case, the Lessor, at its option, may:

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

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

all or any of such Units and thenceforth hold, possess and 518
 enjoy the same free from any right of the Lessee, or its 519
 successors or assigns, to use the Units for any purpose
 whatever; but the Lessor shall, nevertheless, have a right to 520
 recover from the Lessee any and all amounts which under the 521
 terms of this Lease may be then due or which may have accrued
 to the date of such termination (computing the rental for any 522
 number of days less than a full rental period by multiplying 523
 the rental for such full rental period by a fraction of which
 the numerator is such number of days and the denominator is 524
 the total number of days in such full rental period) and also 525
 to recover forthwith from the Lessee (i) as damages for loss 526
 of the bargain and not as a penalty, a sum, with respect to
 each Unit, which represents the excess of (x) the present 528
 value, at the time of such termination, of the entire unpaid
 balance of all rentals for such Unit which would otherwise 529
 have accrued hereunder from the date of such termination to 530
 the end of the term of this Lease as to such Unit over (y) 531
 the then present value of the rentals which the Lessor
 reasonably estimates to be obtainable for the Unit during 532
 such period, such present value to be computed in each case
 on the basis of the CSA Rate compounded semi-annually from 533
 the respective dates upon which rentals would have been
 payable hereunder had this Lease not been terminated, (ii) 535
 any damages and expenses, including reasonable attorneys'
 fees, in addition thereto which the Lessor shall have 536
 sustained by reason of the breach of any covenant or 537
 covenants of this Lease other than for the payment of rental,
 and including, without limitation, (iii) an amount which, 538
 after deduction of all taxes required to be paid by the 539
 Lessor in respect of the receipt thereof under the laws of 540
 the United States of America or any political subdivision 541
 thereof, shall be equal to any portion of the 7% investment 542
 credit (herein called the Investment Credit) allowed by 543
 Section 38 and related sections of the Internal Revenue Code
 of 1954, as amended to the date hereof (hereinafter called 544
 the Code), lost, not claimed, not available for claim,
 disallowed or recaptured by or from the Lessor as a result of 545
 the breach of one or more of the representations, warranties
 and covenants made by the Lessee in Section 17 or any other 546
 provision of the Lease, the termination of this Lease, the 547
 Lessee's loss of the right to use such Unit, any action or 548
 inaction by the Lessor or the sale or other disposition of
 the Lessor's interest in any Unit after the occurrence of an 549
 Event of Default plus such sums as, in the reasonable opinion 550
 of the Lessor, will cause the Lessor's net return under this
 Lease to be equal to the net return that would have been 551
 available to the Lessor if it had been entitled to 552
 utilization of all or such portion of the maximum 553
 depreciation deductions based on a 12 year depreciable life
 for the Units authorized with respect to a Unit under Section 554
 167 of the Code utilizing the "asset depreciation range" for 556

the Units prescribed in accordance with Section 167(m) of the Code for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 1972 IRB 8, employing the double declining balance method of depreciation switching to the sum-of-the-years-digits method of depreciation when most beneficial to the Lessor, utilizing the half-year convention as provided in Reg. 1.167(a)-11(c)(2)(iii) and taking into account an Estimated Gross Salvage Value of 10% of the Lessor's Cost of such Units which will be reduced by 10% of the Lessor's Cost as provided in Section 167(f) of the Code (hereinafter called the Depreciation Deduction) and the deduction in each taxable year of the Lessor 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 and the deduction for the Commitment Fee (as defined in the Security Documents) in the year in which such Commitment Fee is paid or accrued (hereinafter called the Interest Deduction) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in Section 17 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 for any interest 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 shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

SECTION 11. Return of Units Upon Default. Section 11 of the Model Lease Provisions is herein incorporated as Section 11 hereof. 603
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SECTION 12. Assignment; Possession and Use. Section 12 of the Model Lease Provisions is hereby amended by inserting the following sentence at the end of the third paragraph thereof: 609
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So long as the Lessee shall not be in default under this Lease or under the Security Documents in its capacity as Guarantor or otherwise, the Lessee shall be entitled to sublease the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia; provided, however, that the rights of any such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Security Documents and the Lessor under the Lease. 614
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Section 12 of the Model Lease Provisions, as so amended, is herein incorporated as Section 12 hereof. 623

SECTION 13. Renewal 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 term of this Lease or such original term as once extended in the manner hereinafter set forth, 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 a period of two years commencing on the scheduled expiration of such original or once-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" of such Units, such semi-annual payments to be made on January 3 and July 3 in each year of the applicable extended term. 627
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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-user (other than a lessee-user 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. 640
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If on or before four months prior to the expiration of the term of this Lease, or of the once-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 647
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by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

SECTION 14. Return of Units upon Expiration of Term. Section 14 of the Model Lease Provisions is hereby amended by adding the following sentence at the beginning of the first paragraph:

"The Lessor intends to retain the Units for re-lease at the expiration of the term of this Lease."

Section 14 of the Model Lease Provisions, as so amended, is herein incorporated as Section 14 hereof.

SECTION 15. Opinion of Counsel. Section 15 of the Model Lease Provisions is herein incorporated as Section 15 hereof.

SECTION 16. Recording; Expenses. Section 16 of the Model Lease Provisions is hereby amended by inserting after the word "Act" in the fifth line of the first paragraph thereof the phrase "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". Section 16 of the Model Lease Provisions, as so amended, is herein incorporated as Section 16 hereof.

SECTION 17. Federal Income Taxes. The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the 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 10 of this Lease), with respect to the Units to the extent so provided.

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 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. 707
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The Lessee represents and warrants that (i) at the time the Lessor becomes the owner of the Units, the Units will constitute "new Section 38 property" within the meaning of Section 48(b) 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. 711
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If the Lessor 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, 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 one or more of the following events (hereinafter in this Section 17 called an Event) -- 723
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(a) a Determination as defined in Section 1313(a) of the Code (hereinafter called a Determination) of additional tax liability resulting from the conclusion of the Internal Revenue Service that (i) any representation, fact, estimate, opinion or other statement which is contained in a certificate furnished to the Lessor by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, which is contained in the Request for Rulings (as defined in Section 19 hereof) is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading or insufficient in whole or in part); (ii) any representation, fact, estimate, opinion or other statement made or stated in writing by the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, in connection with the obtaining of the rulings requested in such Request for Rulings is fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part (including any omission of a material fact which causes such representation, fact, estimate, opinion or other statement to be misleading or insufficient in whole or in part); or (iii) the Lessee, or any affiliated company or any officer, employee, agent or attorney thereof, has taken or failed to take any action whatsoever (including, without limitation, 731
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any action in respect of the Lessee's or such affiliate's	753
income tax returns) which action or non-action is	754
inconsistent with or in contravention of any of the matters	755
set forth in such Request for Rulings or set forth in the	
rulings issued pursuant thereto or in any closing agreement	756
entered into in connection with such rulings; or	757
(b) the representations contained in this Section 17	759
being untrue,	760
then, in such Event, the Lessee shall pay to the Lessor as	762
additional rent an amount which, after deduction of all taxes	763
required to be paid by the Lessor in respect of the receipt	
thereof under the laws of any Federal, state, or local government	764
or taxing authority of the United States, shall be equal to any	765
portion of the Investment Credit, lost, not claimed, not	
available for claim, disallowed or recaptured by or from the	766
Lessor as a consequence of such Event plus such sums as, in the	767
reasonable opinion of the Lessor, will cause the Lessor's net	768
return to be equal to the net return that would have been	
available to the Lessor if it had been entitled to utilization of	769
all of the Interest Deduction or Depreciation Deduction which was	770
lost, not claimed, not available for claim, disallowed or	
recaptured by or from the Lessor in consequence of the Event plus	772
such sum as will pay or reimburse the Lessor for any interest or	773
penalties incurred in connection with the Investment Credit,	774
Depreciation Deduction or Interest Deduction which is lost, not	775
claimed, not available for claim, disallowed or recaptured.	776
Upon the commencement of any proceeding (including the	779
written claim or written threat of such proceeding) in respect of	780
which indemnity may be sought under the foregoing paragraph of	
this Section 17, the Lessor shall promptly, upon its knowledge	781
thereof, given written notice of such commencement to the Lessee.	782
In case such notice of any such commencement shall be so given,	783
the Lessee shall be entitled to participate in any such	784
proceeding at its own expense or, if it so elects, to assume	785
responsibility for such proceeding, and in the latter event such	786
proceeding shall be conducted by counsel chosen by and	
satisfactory to the Lessor who shall be involved in such	787
proceeding, and the Lessor shall bear the fees and expenses of	788
any additional counsel retained by the Lessor, but if the Lessee	789
shall not elect to assume the responsibility for such proceeding,	
the Lessee will reimburse the Lessor for the reasonable fees and	790
expenses of any counsel retained by it.	791
SECTION 18. <u>Interest on Overdue Rentals.</u> Anything to the	796
contrary herein contained notwithstanding, any nonpayment of	
rentals and other obligations due hereunder shall result in the	798
obligation on the part of the Lessee promptly to pay, to the	
extent legally enforceable, interest at the Overdue Rate (as	799

defined in the Security Documents) on the overdue rentals for the 799
 period of time during which they are overdue, or at such lesser 800
 rate as may be legally enforceable.

**SECTION 19. Purchase of Equipment by Lessee Under Certain 803
Conditions. If--**

(a) On or before June 1, 1974, the Internal Revenue 806
 Service for any reason whatsoever shall not have issued to 807
 the Lessor, upon a request by it (hereinafter called the 809
 Request for Rulings), a favorable tax ruling to the effect 810
 that: (i) this Lease constitutes a true lease and the Lessor 812
 will be treated as owner of the Units; (ii) the Lessor is 813
 entitled to the Interest Deduction (as defined in Section 10 814
 hereof) in computing its taxable income; (iii) the Lessor is 816
 entitled to the Investment Credit (as defined in Section 10 817
 hereof) in respect of 100% of the Purchase Price (as defined 819
 in the Security Documents); (iv) the Lessor is entitled to 820
 the Depreciation Deduction (as defined in Section 10 hereof) 821
 in respect of 100% of the Purchase Price of the Units; (v) 823
 the payments to be paid by the Lessee for the use of the 824
 Units constitute rent and are deductible by the Lessee 825
 pursuant to Section 162(a) (3) of the Code.

(b) On or before June 1, 1974, the Lessee on behalf of 827
 the Lessor shall not have arranged for a limited number of 828
 institutional investors or other financial institutions 830
 (hereinafter called the Investors) to acquire through the 831
 Vendor, on or before July 3, 1974, the interests of the 832
 Vendor under the Security Documents at a price equal to the 833
 unpaid Conditional Sale Indebtedness (as defined in the 834
 Security Documents), all on such reasonable terms and 835
 conditions (including any amendments of this Lease and the 836
 Security Documents, and any other documents executed in
 connection with this Lease and the Security Documents, which
 may reasonably be required) as shall be reasonably
 satisfactory in form and substance to the Investors and to
 the Lessor;

then the Lessee shall purchase from the Lessor on July 3, 1974, 838
 all of the Units subject to this Lease for a purchase price equal 839
 to (i) the Purchase Price of each such Unit plus interest on such 840
 amount at the CSA Rate from the settlement date or dates of each 841
 such Unit under the Security Documents to and including the date 842
 of such purchase, plus all fees and expenses paid or incurred by 843
 the Lessor (including without limitation brokerage commissions, 844
 legal and printing fees, and attorneys' and accountants' fees) in 846
 connection with the transactions contemplated by the Security
 Documents and this Lease, less (ii) any rental payments paid to 847
 the Lessor under Section 3 of this Lease.

It is intended that upon the payment by the Lessee to the Lessor of the sum provided for in the preceding paragraph the Lessee shall be entitled to such deductions, credits and other benefits as are provided for in the Code to an owner of property including (without limitation) the Investment Credit and Depreciation Deductions described above.

SECTION 20. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

(a) if to the Lessor, at 127 Public Square, Cleveland, Ohio 44114, attention of Vice-President,

(b) if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101, attention of Assistant Vice President, Financial Planning Division,

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

SECTION 21. Severability; Effect and Modification of Lease. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

SECTION 22. Execution. This Lease may be executed in several counterparts and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of September 1, 1973, 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.

SECTION 23. Law Governing. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed or
caused this instrument to be executed as of the date first above
written. 902
903

SOCIETY NATIONAL BANK OF 907
CLEVELAND 908

by _____ 911
Vice President 912

[CORPORATE SEAL] 915

Attest: 918

Assistant Secretary 920
921

BURLINGTON NORTHERN INC. 923

by _____ 925
Vice President 926

[CORPORATE SEAL] 929

Attest: 931

Assistant Secretary 933
934

SCHEDULE A

<u>Quantity</u>	<u>Description</u>	<u>Lessee's Road Numbers (Inclusive)</u>	
			997
			1000
			1001
			1002
10	General Motors Corporation (Electro-Motive Division), Model SD-40-2, 3000 h.p. Locomotives	6824-6833	1005 1006 1007 1008 1009 1010

ASSIGNMENT OF LEASE AND AGREEMENT dated as of September 1, 22
1973 (hereinafter called this Assignment), between SOCIETY 24
NATIONAL BANK OF CLEVELAND (hereinafter called the Lessor or the 25
Vendee) and FIRST SECURITY BANK OF UTAH, N.A., as Agent
(hereinafter called the Vendor). 26

WHEREAS, the Lessor and BURLINGTON NORTHERN INC. (hereinafter 28
called the Lessee) are entering into a Conditional Sale Agreement 29
dated as of the date hereof (hereinafter called the Security
Documents), with GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE 30
DIVISION) (hereinafter called the Builder), wherein the Builder 32
has agreed to manufacture, sell and deliver to the Lessor the 33
units of railroad equipment described in Schedule A thereto 34
(hereinafter called the Units);

WHEREAS the Builder is assigning its interest in the Security 37
Documents to the Vendor;

WHEREAS the Lessor and the Lessee are entering into a Lease 39
of Railroad Equipment dated as of the date hereof (hereinafter 40
called the Lease), providing for the leasing by the Lessor to the 41
Lessee of the Units; and 42

WHEREAS, in order to provide security for the obligations of 44
the Lessor under the Security Documents and as an inducement to 45
the Vendor to invest in the Conditional Sale Indebtedness (as 46
that term is defined in the Security Documents), the Lessor 47
agrees to assign for security purposes its rights in, to and 48
under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises and of the 50
payments to be made and the covenants hereinafter mentioned to be 51
kept and performed and subject to the last paragraph of Article 4 52
of the Security Documents, the parties hereto agree as follows: 53

1. Subject to the provisions of Paragraphs 11 and 12 hereof, 55
the Lessor hereby assigns, transfers and sets over unto the 56
Vendor, as collateral security for the payment and performance of 57
the obligations of the Lessor as Vendee under the Security 58
Documents, all the Lessor's right, title and interest, powers, 59
privileges, and other benefits under the Lease, including, 60
without limitation, the immediate right to receive and collect 61
all rentals, profits and other sums payable to or receivable by 62
the Lessor from the Lessee under or pursuant to the provisions of 63
the Lease whether as rent, casualty payment, indemnity, 64

liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the 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 sums 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. So long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Security Documents shall have occurred and be continuing, any balance shall be paid to the Lessor.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations 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 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, such payments or acts including specifically, without in any way limiting the general powers of the Vendor, appearing in and defending any action or proceeding purporting to affect the security hereof and the rights or powers of the Vendor, and also performing and discharging 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. Subject to the provisions of Paragraphs 11 and 12 hereof, the Lessor does hereby constitute 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 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. If an event of default under the Security Documents shall occur and be continuing, the Vendor may declare all sums secured hereby immediately due and payable and may apply all such sums against the amounts due and payable under the Security Documents.

7. 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, 164
 rerecord or redeposit whenever required) any and all further 165
 instruments required by law or reasonably requested by the Vendor 166
 in order to confirm or further assure, the interests of the 167
 Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned 169
 to it hereby or arising under the Lease, including, without 170
 limitation, the right to receive any Payments due or to become 171
 due. In the event of any such assignment, any such subsequent or 172
 successive assignee or assignees shall, to the extent of such 173
 assignment, enjoy all the rights and privileges and be subject to 174
 all the obligations of the Vendor hereunder. 175

9. This Assignment shall be governed by the laws of the 177
 State of Ohio, but the parties shall be entitled to all rights 178
 conferred by Section 20c of the Interstate Commerce Act. 179

10. The Lessor shall cause copies of all notices received in 182
 connection with the Lease and all payments hereunder to be 183
 promptly delivered or made to the Vendor at its address set forth 184
 in Article 22 of the Security Documents, or at such other address 185
 as the Vendor shall designate (with a copy to ITEL Leasing 186
 Corporation, One Embarcadero Center, San Francisco, California 187
 94111, attention of Contract Administration). 188

11. The Vendor hereby agrees with the Lessor that the Vendor 192
 will not, so long as no Event of Default under the Lease nor an 193
 event of default under the Security Documents has occurred and is 194
 then continuing, exercise or enforce, or seek to exercise or 195
 enforce, or avail itself of, any of the rights, powers, 196
 privileges, authorizations or benefits assigned and transferred 197
 by the Lessor to the Vendor by this Assignment. 198

12. It is the understanding of the parties to this 200
 Assignment that the parties to the Lease are entitled freely to 201
 renegotiate the provisions in said Lease relating to or affected 202
 by income taxes and the rentals to be paid by the Lessee if the 203
 Lessor is unable to obtain the favorable tax ruling described in
 Section 19 of the Lease. The provisions as renegotiated by the 204
 parties to said Lease do not require the consent of the Vendor to 205
 be effective so long as the rental payments are high enough to 206
 pay the Conditional Sale Indebtedness plus accrued interest as
 set forth in the Security Documents. 207

IN WITNESS WHEREOF, the parties hereto have caused this 210
 instrument to be executed in their respective corporate names by 211
 officers thereunto duly authorized, and their respective 212
 corporate seals to be affixed and duly attested, all as of the 213
 date first above written.

SOCIETY NATIONAL BANK OF 217
 CLEVELAND 218

by 220
 _____ 221
 Vice President 222

[CORPORATE SEAL] 224

Attest: 226

 Assistant Secretary 229
 230

FIRST SECURITY BANK 233
 OF UTAH, N.A., as Agent, 234

by 236
 _____ 237
 Authorized Officer 238

[CORPORATE SEAL] 240

Attest: 242

 Authorized Officer 245
 246

STATE OF OHIO	)	252
	) ss.:	253
COUNTY OF CUYAHOGA	)	254

On this	day of October, 1973, before me personally	258
appeared	, to me personally known,	259
who, being by me duly sworn, says that he is a Vice President of		261
SOCIETY NATIONAL BANK OF CLEVELAND, that one of the seals affixed		262
to the foregoing instrument is the corporate seal of said		263
corporation, that said instrument was signed and sealed on behalf		264
of said corporation by authority of its Board of Directors, and		266
he acknowledged that the execution of the foregoing instrument		267
was the free act and deed of said corporation.		

	_____	271
	Notary Public	272
[NOTARIAL SEAL]		273
My Commission expires	.	275

STATE OF UTAH	)	278
	) ss.:	279
COUNTY OF SALT LAKE	)	280

On this	day of October, 1973, before me personally	284
appeared	, to me personally known,	285
who, being by me duly sworn, says that he is an Authorized		286
Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the		288
seals affixed to the foregoing instrument is the corporate seal		289
of said national association, that said instrument was signed and		290
sealed on behalf of said national association by authority of its		291
Board of Directors, and he acknowledged that the execution of the		292
foregoing instrument was the free act and deed of said national		293
association.		

	_____	297
	Notary Public	298
[NOTARIAL SEAL]		
My Commission expires	.	300

AGREEMENT AND ASSIGNMENT dated as of September 1, 1973,
between the corporation first signing under the testimonium
below (hereinafter called the Builder), and FIRST SECURITY
BANK OF UTAH, N.A., acting as Agent under a Finance Agreement
dated as of the date hereof (hereinafter called the Finance
Agreement), said Agent, so acting, being hereinafter called
the Assignee.

WHEREAS, the Builder, SOCIETY NATIONAL BANK OF CLEVELAND
(hereinafter called the Vendee) and BURLINGTON NORTHERN INC.
(hereinafter called the Guarantor) have entered into a
Conditional Sale Agreement dated as of the date hereof
(hereinafter called the Conditional Sale Agreement), covering the
construction, sale and delivery, on the conditions therein set
forth, by the Builder and the purchase by the Vendee of the
railroad equipment described in Annex B to the Conditional Sale
Agreement (said equipment being hereinafter called the
Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter
called this Assignment) WITNESSETH: That, in consideration of the
sum of One Dollar (\$1.00) and other good and valuable
consideration paid by the Assignee to the Builder, the receipt of
which is hereby acknowledged, as well as of the mutual covenants
herein contained:

SECTION 1. Whenever this Assignment incorporates herein by
reference, in whole or in part or as hereby amended, any
provision of the document entitled "Model Assignment Provisions
for Lease Transactions" annexed to the Conditional Sale Agreement
as Part III of Annex C thereto (hereinafter called the Model
Assignment Provisions), such provision of the Model Assignment
Provisions shall be deemed to be a part of this instrument as
fully to all intents and purposes as though such provision had
been set forth in full herein.

SECTION 2. The Builder hereby assigns, transfers, and sets
over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the
Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in
and to the Conditional Sale Agreement (except the right to
construct and deliver the Equipment and the right to receive
the payments specified in the third paragraph of Article 3
thereof, in the first paragraph and in subparagraph (a) of
the third paragraph of Article 4 thereof, in the last
paragraph of Article 15 thereof and reimbursement for taxes
paid or incurred by the Builder), and except as aforesaid in
and to any and all amounts which may be or become due or
owing to the Builder under the Conditional Sale Agreement on

account of the indebtedness in respect of the Purchase Price	72
(as defined in the Conditional Sale Agreement) of the	73
Equipment and interest thereon, and in and to any other sums	74
becoming due from the Vendee or the Guarantor under the	75
Conditional Sale Agreement, other than those hereinabove	76
excluded; and	77
(c) Except as limited by subparagraph (b) of this	79
paragraph, all the Builder's rights, titles, powers,	80
privileges and remedies under the Conditional Sale Agreement;	81
without any recourse hereunder, however, against the Builder for	83
or on account of the failure of the Vendee or the Guarantor to	84
make any of the payments provided for in, or otherwise to comply	85
with, any of the provisions of the Conditional Sale Agreement;	86
<u>provided, however,</u> that this Assignment shall not subject the	87
Assignee to, or transfer, or pass, or in any way affect or	88
modify, the obligations of the Builder to deliver the Equipment	89
in accordance with the Conditional Sale Agreement or with respect	90
to its warranties and agreements contained in Article 14 of the	91
Conditional Sale Agreement or relieve the Vendee or the Guarantor	92
from their respective obligations to the Builder contained in	93
Articles 2, 3, 4, 6, 8 and 14 of the Conditional Sale Agreement,	94
it being understood and agreed that, notwithstanding this	95
Assignment, or any subsequent assignment pursuant to the	96
provisions of Article 15 of the Conditional Sale Agreement, all	98
obligations of the Builder to the Vendee with respect to the	99
Equipment shall be and remain enforceable by the Vendee, its	100
successors and assigns, against and only against the Builder. In	102
furtherance of the foregoing assignment and transfer, the Builder	103
hereby authorizes and empowers the Assignee in the Assignee's own	104
name, or in the name of the Assignee's nominee, or in the name of	105
and as attorney, hereby irrevocably constituted, for the Builder,	106
to ask, demand, sue for, collect, receive and enforce any and all	107
sums to which the Assignee is or may become entitled under this	108
Assignment and compliance by the Vendee and the Guarantor with	110
the terms and agreements on their parts to be performed under the	111
Conditional Sale Agreement, but at the expense and liability and	
for the sole benefit of the Assignee.	
SECTION 3. Section 3 of the Model Assignment Provisions is	113
herein incorporated as Section 3 hereof.	114
SECTION 4. Section 4 of the Model Assignment Provisions is	116
herein incorporated as Section 4 hereof.	117
SECTION 5. Section 5 of the Model Assignment Provisions is	119
herein incorporated as Section 5 hereof, the Builder further	121
agreeing that, upon request by the Agent, counsel for the Builder	122
will deliver to the Investors (as defined in Section 19 of a	123
Lease of Railroad Equipment, dated as of September 1, 1973,	124
between the Vendee and the Guarantor) on the Takeout Date (as	127

defined in Article 4 of the Conditional Sale Agreement) an opinion, dated as of the Takeout Date, to the effect set forth in subparagraph (h) of the first paragraph of Section 5 of the Model Assignment Provisions, incorporated herein.

SECTION 6. Section 6 of the Model Assignment Provisions is herein incorporated as Section 6 hereof.

SECTION 7. Section 7 of the Model Assignment Provisions is herein incorporated as Section 7 hereof.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Article 8 hereof.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 10. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Builder shall be deemed to be the original counterpart. Although this Assignment is dated as of September 1, 1973, 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.

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

GENERAL MOTORS CORPORATION 175
(ELECTRO-MOTIVE DIVISION) 176

by Harold Smith 179
Vice President 180

[CORPORATE SEAL] 183

Attest: W. Thomas 185
Assistant Secretary 187
188

FIRST SECURITY BANK OF UTAH, N.A. 193
as Agent 194
by Thomas C. Cashbert 196
Authorized Officer 197

[CORPORATE SEAL] 200

Attest: Scott D. Allen 203
Authorized Officer 205
206



STATE OF ILLINOIS	)	211
	) ss.:	212
COUNTY OF COOK	)	213

On this *2nd* day of ~~October~~ *November*, 1973, before me personally appeared **HAROLD L. SMITH**, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION), 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.

Zula C. Claes

 Notary Public

[NOTARIAL SEAL] 233

My Commission expires **JULY 11, 1976** 235

STATE OF UTAH	)	238
	) ss.:	239
COUNTY OF SALT LAKE	)	240

On this *2nd* day of ~~October~~ *November*, 1973, before me personally appeared *Thomas C. Cuthbert*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Berence M. Thomas

 Notary Public

[NOTARIAL SEAL] 259

My Commission expires *June 2, 1977* 261

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

264

Receipt of a copy of, and due notice of the assignment made 270
 by, the foregoing Agreement and Assignment is hereby acknowledged 271
 as of September 1, 1973. 272

SOCIETY NATIONAL BANK OF 275
 CLEVELAND 276

by Paul P. Woodburn 279
 Vice President 280

BURLINGTON NORTHERN INC. 284

by Frank H. Coyne 287
 Vice President 288