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INTERSTATE COMMERCE COMMISSION

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LEASE OF RAILROAD EQUIPMENT

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Dated as of September 1, 1973

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between

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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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**ASSIGNMENT OF LEASE
AND AGREEMENT**

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Dated as of September 1, 1973

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between

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SOCIETY NATIONAL BANK OF CLEVELAND

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and

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

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

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%	177 178 180
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.

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.

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

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>	
		381
		382
		383
Third	13.9885%	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
 Units constitute rent and are deductible by the Lessee 824
 pursuant to Section 162(a) (3) of the Code. 825

(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
 (hereinafter called the Investors) to acquire through the 830
 Vendor, on or before July 3, 1974, the interests of the 831
 Vendor under the Security Documents at a price equal to the 832
 unpaid Conditional Sale Indebtedness (as defined in the
 Security Documents), all on such reasonable terms and 833
 conditions (including any amendments of this Lease and the
 Security Documents, and any other documents executed in 834
 connection with this Lease and the Security Documents, which 835
 may reasonably be required) as shall be reasonably
 satisfactory in form and substance to the Investors and to 836
 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.

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SOCIETY NATIONAL BANK OF
CLEVELAND

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by Ben C. P. Woodburn
Vice President

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[CORPORATE SEAL]

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Attest:

John J. Campbell
Assistant Secretary

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BURLINGTON NORTHERN INC.

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by Frank H. Coyne
Vice President

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[CORPORATE SEAL]

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Attest:

Francis
Assistant Secretary

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STATE OF OHIO)	939
) ss.:	940
COUNTY OF CUYAHOGA)		941

On this ^{5th} day of November, 1973, before me personally appeared IAN C. P. Woodbourn, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOCIETY NATIONAL BANK OF CLEVELAND, that the seal 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

Gerald A. Buck
Notary Public 955
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[NOTARIAL SEAL]

GERALD A. BUCK, Notary Public 959

CUYAHOGA COUNTY, OHIO

My Commission expires

My commission expires Oct. 18, 1976 961

STATE OF MINNESOTA)	967
) ss.:	968
COUNTY OF RAMSEY)	969

On this ^{3rd} day of November, 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.

Dorothy Tjornhom
Notary Public 984
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[NOTARIAL SEAL]

DOROTHY TJORNHOM
NOTARY PUBLIC - MINNESOTA 988

RAMSEY COUNTY

My Commission expires

My Commission Expires Aug. 30, 1979 990

SCHEDULE A

997

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

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.

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.	115 116 117 118
(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.	120 121 122 123 124 125 126 127 128 129 130 132 133 134 135 136 137
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.	139 140 141 142 143 144 145 146 147 148
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.	150 151 152 153 154
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.	156 157 159 160
7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file,	162 163

register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interests of the Vendor hereunder.

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

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

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

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

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

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 Paul P. Woodburn 220
 Vice President 221
 222

[CORPORATE SEAL] 224

Attest:

John J. Campbell
 Assistant Secretary 226

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

by Thomas C. [Signature] 236
 Authorized Officer 237
 238

[CORPORATE SEAL] 240

Attest:

Scott [Signature]
 Authorized Officer 242

245
 246

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

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

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308

BURLINGTON NORTHERN INC.

311

by Frank H Coyne
Vice President

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