

Interstate Commerce Commission  
Washington, D. C.

8880  
RECORDATION NO. .... Filed & Recorded

JUL 11 1977 -3 15 PM

INTERSTATE COMMERCE COMMISSION

Gentlemen:

Enclosed for recordation under the provisions of Section 20(c) of the Interstate Commerce Act, as amended, are the original and 10 counterparts of an Equipment Lease dated as of June 1, 1977.

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

The names and addresses of the parties are:

Lessor: Trust Company for USL, Inc.,  
as Trustee under Illinois  
Terminal Trust No. 77-11  
1211 West 22nd Street  
Oak Brook, Illinois 60521

Lessee: Burlington Northern Inc.  
176 East 5th Street  
St. Paul, Minnesota 55101

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

Please return the original and 8 copies of the Equipment Lease to John L. Touhy, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

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

Very truly yours,

TRUST COMPANY FOR USL, INC.,  
not in its individual capacity  
but solely as Trustee under  
Illinois Terminal Trust No. 77-11

By Richard A. [Signature]  
Its Authorized Officer

LESSOR AS AFORESAID

Enclosures

*C. J. Korman*  
*Chapman and Cutler*

MANUFACTURER:

Portec, Inc.  
(Paragon Division)

PLANT OF MANUFACTURER:

Novi, Michigan

DESCRIPTION OF ITEMS OF  
EQUIPMENT:

Type A (Ford Service): 50  
screened Bi-level Auto Racks  
without end doors, which shall  
bear Railroad's rack identify-  
ing nos. BN 2148 through  
BN 2197, both inclusive  
and Manufacturer's serial nos.  
2009-1 through 2009-50, both  
inclusive.

Type B (Import Service): 77  
enclosed Tri-level Auto  
Racks without end doors, which  
shall bear Railroad's rack  
identifying nos. BN 4316  
through BN 4392, both inclu-  
sive and Manufacturer's serial  
nos. 40307-1 through 40307-77,  
both inclusive.

Type C (G.M. Service): 23  
enclosed Tri-level Auto Racks  
with end doors, which shall  
bear Railroad's rack identify-  
ing nos. BN 4393 through  
BN 4415, both inclusive and  
Manufacturer's serial nos.  
40621-1 through 40621-23, both  
inclusive.

SPECIFICATIONS:

Purchase Order No. OB 30466-6  
(Type C), OB 30465-6 (Type B),  
OB 30467-6 (Type A).

BASE PRICE (SUBJECT TO  
CHANGE):

Type A: \$12,050 per Item  
(\$602,500 for 50 Items)

Type B: \$25,050 per Item  
(\$1,928,850 for 77 Items)

Type C: \$29,050 per Item  
(\$668,150 for 23 Items)

MAXIMUM AGGREGATE  
PURCHASE PRICE:

\$3,519,450 for 150 Items

DELIVER TO:

Burlington Northern Inc.

PLACE OF DELIVERY:

Novi, Michigan

SCHEDULE A

**Interstate Commerce Commission**  
Washington, D.C. 20423

7/11/77

OFFICE OF THE SECRETARY

John L. Tuohy, Esq.  
Chapman and Cutler  
111 West Monroe St.  
Chicago, Illinois 60603

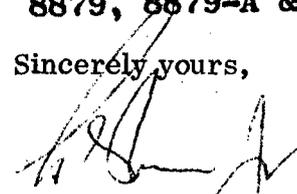
Dear

**Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **7/11/77** at **3:15pm**  
and assigned recordation number(s) **8879, 8879-A & 8880**

Sincerely yours,

  
H.G. Homme, Jr.  
Acting Secretary

Enclosure(s)

ESTIMATED DELIVERY DATE: July, 1977 - October, 1977

OUTSIDE DELIVERY DATE: March 31, 1978

FIXED RENTAL PAYMENTS: For each Item of Equipment delivered to and accepted by the Lessee under the Lease six (6) rental payments in arrears each equal to 5.32704% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Item of Equipment, followed by twelve (12) semi-annual rental payments in arrears each equal to 6.50964% of the Purchase Price of such Item of Equipment, such 18 installments to be payable commencing July 5, 1978 and on each January 5 and July 5 thereafter to and including January 5, 1987.

Lessee: Burlington Northern Inc.

Assignee of Manufacturer: Continental Illinois National Bank  
and Trust Company of Chicago

(Burlington Northern Trust No. 77-11)

MANUFACTURER:

Portec, Inc.  
(Paragon Division)

PLANT OF MANUFACTURER:

Novi, Michigan

DESCRIPTION OF ITEMS OF  
EQUIPMENT:

Type A (Ford Service): 50  
screened Bi-level Auto Racks  
without end doors, which shall  
bear Railroad's rack identify-  
ing nos. BN 2148 through  
BN 2197, both inclusive  
and Manufacturer's serial nos.  
2009-1 through 2009-50, both  
inclusive.

Type B (Import Service): 77  
enclosed Tri-level Auto  
Racks without end doors, which  
shall bear Railroad's rack  
identifying nos. BN 4316  
through BN 4392, both inclu-  
sive and Manufacturer's serial  
nos. 40307-1 through 40307-77,  
both inclusive.

Type C (G.M. Service): 23  
enclosed Tri-level Auto Racks  
with end doors, which shall  
bear Railroad's rack identify-  
ing nos. BN 4393 through  
BN 4415, both inclusive and  
Manufacturer's serial nos.  
40621-1 through 40621-23, both  
inclusive.

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Purchase Order No. OB 30466-6  
(Type C), OB 30465-6 (Type B),  
OB 30467-6 (Type A).

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(\$1,928,850 for 77 Items)

Type C: \$29,050 per Item  
(\$668,150 for 23 Items)

MAXIMUM AGGREGATE  
PURCHASE PRICE:

\$3,519,450 for 150 Items

DELIVER TO:

Burlington Northern Inc.

PLACE OF DELIVERY:

Novi, Michigan

SCHEDULE A  
(to Equipment Lease)

ESTIMATED DELIVERY DATE: July, 1977 - October, 1977

OUTSIDE DELIVERY DATE: March 31, 1978

FIXED RENTAL PAYMENTS: For each Item of Equipment delivered to and accepted by the Lessee under the Lease six (6) rental payments in arrears each equal to 5.32704% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Item of Equipment, followed by twelve (12) semi-annual rental payments in arrears each equal to 6.50964% of the Purchase Price of such Item of Equipment, such 18 installments to be payable commencing July 5, 1978 and on each January 5 and July 5 thereafter to and including January 5, 1987.

Lessee: Burlington Northern Inc.

Assignee of Manufacturer: Continental Illinois National Bank  
and Trust Company of Chicago

(Burlington Northern Trust No. 77-11)

CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE

To: Trust Company for USL, Inc., as Trustee  
under Burlington Northern Trust No. 77-11  
("Trustee")

Portec, Inc. (Paragon Division)  
("Manufacturer")

I, a duly appointed inspector and authorized representative of BURLINGTON NORTHERN INC. ("Lessee") and of the above named Trustee, do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Lessee and under the Equipment Lease dated as of June 1, 1977 between the Trustee and the Lessee, and on behalf of the Trustee under the Conditional Sale Agreement dated as of June 1, 1977 among Portec, Inc. (Paragon Division), the Trustee and the Lessee, of the following Items of Equipment ("Equipment"):

TYPE OF EQUIPMENT: Automobile Rack

MANUFACTURER: Portec, Inc. (Paragon Division)

PLACE ACCEPTED: Novi, Michigan

NUMBER OF ITEMS:

I do further certify that the foregoing Equipment is in good order and condition, and conforms to the Specifications applicable thereto, and at the time of delivery to the Lessee there was plainly, distinctly, permanently and conspicuously marked in contrasting colors upon each side of each Item of Equipment the following legend in letters not less than one inch in height:

"Leased from Trust Company for USL, Inc., as Lessor and Trustee-Vendee, and subject to a Security Interest in favor of Continental Illinois National Bank and Trust Company of Chicago, Secured Party."

(Burlington Northern Trust No. 77-11)

SCHEDULE B  
(to Equipment Lease)

I do further certify that the following schedule sets forth the Lessee rack number of each of the foregoing Items of Equipment and the railroad car number to which such Item is attached:

<u>Lessee Rack Number</u>	<u>Type of Rack</u> (Screened Bi-Level or Enclosed Tri-Level)	<u>Manufacturer's Serial Number</u>	<u>Railroad Car Number to which such Item is Attached</u>	<u>Date Accepted</u>
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The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer of the Equipment for warranties it has made with respect to the Equipment.

\_\_\_\_\_  
 Inspector and Authorized  
 Representative of Lessee and Trustee

BURLINGTON NORTHERN INC.

SCHEDULE OF PERCENTAGES  
(REFERRED TO IN SECTION 11.5(a))

<u>January 5, 1978 or Fixed Rental Payment Date on which Casualty Value is Paid (Payment in Addi- tion to Rent Payment)</u>	<u>Percentage of the Purchase Price (as defined in the Con- ditional Sale Agree- ment) Payable as Casualty Value</u>
January 5, 1978	86.334%
July 5, 1978	85.399
January 5, 1979	83.935
July 5, 1979	82.296
January 5, 1980	80.356
July 5, 1980	78.167
January 5, 1981	75.743
July 5, 1981	71.952
January 5, 1982	67.941
July 5, 1982	63.747
January 5, 1983	59.403
July 5, 1983	54.913
January 5, 1984	50.313
July 5, 1984	45.599
January 5, 1985	40.811
July 5, 1985	35.937
January 5, 1986	31.024
July 5, 1986	26.050
January 5, 1987	20.000

SCHEDULE C  
(to Equipment Lease)

8880  
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JUL 11 1977 - 3 15 PM

INDEKSIAE COMMERCE COMMISSION

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EQUIPMENT LEASE

Dated as of June 1, 1977

BETWEEN

TRUST COMPANY FOR USL, INC.  
as Trustee

Lessor

AND

BURLINGTON NORTHERN INC.

Lessee

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(Burlington Northern Trust No. 77-11)  
(150 Screened Bi-Level and Enclosed  
Tri-Level Auto Racks)

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Attachments to Lease

- Schedule A - Description of Equipment
- Schedule B - Certificate of Acceptance  
under Equipment Lease
- Schedule C - Schedule of Percentages

THIS EQUIPMENT LEASE dated as of June 1, 1977 between TRUST COMPANY FOR USL, INC., as Trustee under a Trust Agreement (the "Trust Agreement") with CITY NATIONAL BANK (the "Trustor") dated as of June 1, 1977 relating to Burlington Northern Trust No. 77-11 (the "Lessor") and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee");

W I T N E S S E T H:

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated the date hereof (the "Conditional Sale Agreement"), with PORTEC, INC. (Paragon Division) (the "Manufacturer") providing for the construction, sale and delivery to the Lessor of the railroad equipment (collectively the "Items of Equipment" or "Equipment" and individually an "Item" or "Item of Equipment") described in Schedule A attached hereto and made a part hereof; and

WHEREAS, by instrument of Agreement and Assignment dated the date hereof, the Manufacturer has assigned or will assign its right, security title and interest under the Conditional Sale Agreement to Continental Illinois National Bank and Trust Company of Chicago, as Assignee (the "Assignee"); and

WHEREAS, the Lessee desires to lease all of the Items of Equipment or such lesser number as are delivered to and accepted under the Conditional Sale Agreement on or prior to the outside delivery date set forth in said Schedule A, at the rentals and for the terms and upon the conditions hereinafter provided;

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

SECTION 1. DELIVERY AND ACCEPTANCE OF EQUIPMENT, PURCHASE OF EXCLUDED EQUIPMENT.

1.1. Delivery and Acceptance of Equipment.

The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedule A. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Item of Equipment is found to conform to the specifications therefor, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and to the Manufacturer thereof a certificate of acceptance (hereinafter called "Certificate of Acceptance") substantially in the form attached hereto as Schedule B, whereupon such Item of Equipment shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all of the terms and conditions of this Lease.

1.2. Purchase of Excluded Equipment. In the event of the exclusion of any Item or Items of Equipment from the Conditional Sale Agreement pursuant to Sections 2.3 or 3.1 thereof, the Lessee agrees with the Lessor, and also with and for the benefit of the Manufacturer who is hereby designated a third party beneficiary to the undertakings of the Lessee set forth in this Section 1.2, that the Lessee will be obligated to purchase from the Manufacturer, accept delivery of and pay for, any Item or Items of Equipment so excluded from the Conditional Sale Agreement and the Manufacturer and the Lessee shall execute a separate agreement providing for the sale of such excluded Item or Items of Equipment by the Manufacturer to the Lessee upon the same terms and conditions as those contained in the Conditional Sale Agreement, modified only to the extent necessary to provide for payment in cash upon delivery of such excluded Item or Item of Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Lessee may determine and as may be reasonably satisfactory to the Manufacturer.

## SECTION 2. RENTALS AND PAYMENT DATES.

2.1. Rentals for Equipment. The Lessee agrees to pay the Lessor the following Rent for the Items of Equipment leased hereunder:

Fixed Rental. For each Item of Equipment eighteen (18) consecutive semiannual installments (the "Fixed Rental") each payable in arrears in the amount provided for such Item of Equipment in Schedule A hereto; provided, however, that in the event that the Closing Date (as defined in the Conditional Sale Agreement) for any Item of Equipment shall have occurred after January 5, 1978 and on or before March 31, 1978, the installments of Fixed Rental payable with respect to such Item shall be adjusted in accordance with Section 2.5(b) hereof.

2.2. Rental Payment Dates. The installments of Fixed Rental for all Items of Equipment shall be due and payable on July 5, 1978 and on each January 5 and July 5 thereafter to and including January 5, 1987.

2.3. Place of Rent Payment. Except for payments covered by Section 24.6 of the Conditional Sale Agreement, all payments provided for in this Lease to be made to the Lessor shall be made not later than 10:00 A.M. Chicago time on the business day the same is payable hereunder to the Assignee by wire transfer of federal funds or otherwise immediately available funds to the Assignee at its principal office in Chicago, Illinois, Attention: Corporate Trust Division, or at such other place as the Lessor or its assigns shall specify in writing.

2.4. Net Lease. This lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, or any set-off or counterclaim, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise against the Manufacturer or against the Assignee, or against any entity having a beneficial interest in the obligations to be performed under the Conditional Sale Agreement; 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 or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is placed and ready for delivery to the Lessor on the Lessee's lines, or is stored for the Lessor on the Lessee's lines or leaves the Lessee's lines for off-line delivery to the Lessor.

2.5. Rental Adjustments. (a) The Lessee, the Lessor and the Trustor each contemplate that on each Closing Date (as defined in the Conditional Sale Agreement) the Lessor will pay to the Manufacturer on such date, from funds advanced to the Lessor by the Trustor, as a down payment with respect to the purchase of the Items of Equipment to be settled for on such date under the Conditional Sale Agreement, an amount equal to 31.7% of the Purchase Price thereof. On such Closing Date it is further contemplated that the Manufacturer will obtain from the Assignee an amount equal to the balance of such Purchase Price and that the Assignee will obtain funds to pay such balance from those institutional investors (the "Investors") named in Schedule A to the Finance Agreement dated as of June 1, 1977 (the "Finance Agreement") among the Assignee, the Lessee and the Investors. The amounts payable as Fixed Rental as above provided and the amounts payable as Casualty Value as set forth in Schedule C hereto have been determined on the assumption that the above stated contemplated arrangement for payment of the Purchase Price for such Items will be consummated on such Closing Date. However, under certain circumstances Section 3 of the Conditional Sale Agreement and Sections 3(b) and 13 of the Finance Agreement provide that on such Closing Date an institutional investor may be substituted for an Investor and, in such event the rate of interest payable in respect of a portion of or all of the Conditional Sale Indebtedness under the Conditional Sale Agreement may be increased. In such event, in lieu of Fixed Rental payable pursuant to Section 2.1 hereof, the Lessee agrees that

the installments of Fixed Rental payable hereunder for the Equipment shall be increased by an amount which shall be sufficient to cause the Trustor's after-tax economic and accounting yields and cash flows to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Trustor in originally evaluating this transaction) that would have been realized by the Trustor if such rate of interest had not been so increased and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Trustor.

(b) In the event that the Closing Date (as defined in the Conditional Sale Agreement) for any Item of Equipment shall have occurred after January 5, 1978 and on or before March 31, 1978, the Fixed Rental installments payable with respect to such Item pursuant to Section 2.1 shall be increased by an amount which shall be sufficient to cause the Trustor's after-tax economic and accounting yields and cash flows to equal the after-tax economic and accounting yields and cash flows (computed on the same assumptions as utilized by the Trustor in originally evaluating this transaction) that would have been realized by the Trustor if the Closing Date with respect to such Item had occurred on or prior to January 5, 1978; and the Casualty Values with respect to such Item shall similarly be adjusted in amounts reasonably determined by Trustor.

### SECTION 3. TERM OF THE LEASE.

The term of this Lease shall begin on the date of execution and delivery of this Lease and, subject to the provisions of Sections 11 and 20 hereof, shall terminate on January 5, 1987.

### SECTION 4. TITLE TO THE EQUIPMENT.

4.1. Retention of Title. As between Lessor and Lessee the Lessor shall and does hereby retain legal title to the Equipment, and it is understood that Lessee shall acquire no right, title and interest to the Equipment except as contemplated hereunder, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Lessee.

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

"Leased from TRUST COMPANY FOR USL, INC., as Lessor and Trustee-Vendee, and subject to a Security Interest in favor of Continental Illinois National Bank and Trust Company of Chicago, as Secured Party."

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

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

#### SECTION 5. DISCLAIMER OF WARRANTIES.

THE LESSOR LEASES THE EQUIPMENT, AS-IS IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY EITHER THE LESSOR OR ANY TRUSTOR, EACH EXPRESSLY DISCLAIMING ANY WARRANTY OR REPRESENTATION, EITHER EXPRESSED OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT INCLUDING BUT NOT LIMITED TO THEIR VALUE, CONDITION, DESIGN OR OPERATION, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturer.

#### SECTION 6. LESSEE'S INDEMNITY.

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

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

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

6.2. Continuation of Indemnities and Assumptions. The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumption of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i) or (ii) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Sections 13 or 15 as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability. The indemnities and assumptions of liabilities set forth in this Section 6 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement).

#### SECTION 7. RULES, LAWS AND REGULATIONS.

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules (including the rules of the United States Department of Transportation) with respect to the use, maintenance and operation of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be installed on such Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such changes, additions and replacements at its own expense and without offset for rent due hereunder.

## SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, suitable for use in interchange. The Lessee shall not modify any Item of Equipment without the written authority and approval of the Lessor which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor, without cost or expense to the Lessor, except for parts installed on and additions to any Item of Equipment (a) any portion of whose cost is furnished by the Lessee, (b) which are readily removable and are promptly removed at the expiration of the Lease term without causing material damage to such Item of Equipment, and (c) were not originally installed on or added to such Item of Equipment pursuant to the requirements of Section 7 or the second sentence of this Section 8.

## SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon the Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which, in the advance opinion of the Lessor, will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of the Lease.

Without limiting the foregoing, the Lessee further agrees that it will keep each Item of Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in any units of railroad rolling stock to which any such Item of Equipment is at any time attached or affixed and of any purchasers of or present or future creditors obtaining a lien on such unit or units of rolling stock, and the Lessee will permit an Item of Equipment to be attached or affixed to a unit of rolling stock only in a manner so as to permit such Item to be readily removable from such unit of rolling stock without material damage to such Item or to such unit of rolling stock and without diminishing or impairing the value or utility of such Item or the value or utility such unit of rolling stock would have had at such time had such Item not been so attached or affixed.

SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

10.1. Filing. Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease, the Conditional Sale Agreement and the first assignment thereof (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited in such public offices within or without the United States as the Lessor may reasonably request for the protection of its title or the security interest of the Assignee to the satisfaction of the Lessor's or the Assignee's counsel and will furnish the Lessor proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all further instruments (including, without limitation, financing and continuation statements or similar notices thereof) required by law or reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the Assignee's security interest in, the Equipment to the satisfaction of the Lessor's or the Assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. The Lessee will pay all costs, charges and expenses incident to any such filing, re-filing, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action.

10.2. Payment of Non-Income Taxes. All payments to be made by the Lessee hereunder will be free of expenses to the Lessor and the Trustor for collection or other charges and will be free of expense to Lessor and the Trustor with respect to the amount of any local, state, federal or foreign taxes (excluding, however, (a) taxes which are imposed by any federal, state or local government or tax authority in the U.S. on or measured by the net or gross income of the Lessor or Trustor, but not excluding franchise taxes, gross receipts taxes and such taxes and charges which are imposed in lieu of taxes on or measured by the gross income or gross receipts of the Lessor or Trustor, provided, however, to the extent the Lessor or Trustor utilizes any franchise or gross receipt tax paid by the Lessee to such taxing authority on behalf of the Lessor or Trustor (or which was paid by the Lessee to the Lessor or Trustor as reimbursement for such tax), as a credit against its State of California

income tax, the Lessor or the Trustor, as the case may be, shall promptly refund to the Lessee an amount equal to the reduction in its California income tax resulting from the utilization of such credit, or (b) taxes which are imposed by any taxing authority or governmental subdivision of a foreign country to the extent the Lessor or Trustor is entitled to a credit therefor against its United States Federal income taxes, or (c) any tax imposed as a direct result of a voluntary transfer or other voluntary disposition by the Lessor or Trustor resulting from the bankruptcy or other proceeding for the relief of creditors in which the Lessor or Trustor is the debtor, whether voluntary or involuntary, of any interest in any Item of Equipment or interest in rentals under this lease), assessments or license certification or registration fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, 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 Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor or a Trustor solely by reason of the Lessor's ownership thereof and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the advance opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any Impositions shall have been charged or levied against the Lessor or the Trustor directly and paid by the Lessor or the Trustor, the Lessee shall reimburse the Lessor or such Trustor on presentation of an invoice therefor. Prior to making such payment, the Lessor or the Trustor shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

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

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

SECTION 11. INSURANCE, CASUALTY OCCURRENCE AND EARLY TERMINATION AND PAYMENTS THEREFOR.

11.1. Insurance. The Lessee will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained property insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies in respect of similar equipment and in any event comparable to those risks insured against by the Lessee in respect of similar equipment owned by it. The benefits of all property insurance shall be payable, so long as the aggregate Conditional Sale Indebtedness shall not have been paid in full, to the Assignee and thereafter to the Lessor, and the Lessee will deliver certificates of insurance evidencing any property insurance effected or in force in accordance with the provisions of this paragraph. With respect to all public liability insurance, the Lessee shall cause each policy to provide, and the insurer issuing such policy to certify to any Assignee and the Lessor, as follows: (1) the Lessor, as owner and lessor of the Equipment, and the Assignee are named as additional insureds as their respective interests may appear, (2) the proceeds of such insurance shall be payable to the Assignee, the Lessor and the Lessee as their respective interests may appear, (3) if the insurer cancels or materially changes

such insurance for any reason whatsoever, or the same is allowed to lapse for nonpayment of premium, such cancellation, material change or lapse shall be ineffective (without liability for additional premium on the part of the Lessor or the Assignee) as to the Lessor and the Assignee for 30 days after receipt by the Lessor and the Assignee of notice from such insurer of such cancellation, material change or lapse and (4) in respect of the interest of the Lessor and the Assignee in such policy, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than of the Lessor, the Assignee or the Trustors, as the case may be) and shall insure the interest of the Lessor and the Assignee regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policy.

Any net insurance proceeds resulting from insurance carried by the Lessee or condemnation payments received by the Lessor in respect of the Equipment suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this Section 11. If the Lessor shall receive any such net insurance proceeds or condemnation payments after the Lessee shall have made a Casualty Value payment pursuant to this Section 11 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such net insurance proceeds or condemnation payments to the Lessee up to an amount equal to the Casualty Value with respect to an Item paid by the Lessee unless an Event of Default or other event (hereinafter called a "Default") which with notice, demand and/or lapse of time, would constitute such an Event of Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11.3. The balance of such net insurance proceeds or condemnation payments shall remain the property of the Lessor. All net insurance proceeds received by the Lessor or the Lessee with respect to an Item not suffering a Casualty Occurrence shall be applied in payment of the cost of repairing the damage to such Item, but no such proceeds shall be paid to the Lessee until the Lessor and the Assignee shall have received a certificate signed by an authorized officer of the Lessee to the effect that such damage has been fully repaired; and any balance remaining after the completion of such repairs shall be paid to the Lessee unless an Event of Default or Default shall have occurred and be continuing, in which case the amount otherwise payable to the Lessee may be retained by the Lessor and applied to discharge the liabilities of the Lessee under Section 11.3.

11.2. Duty of Lessee to Notify Lessor of Casualty Occurrence. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease, including any renewal term hereunder, or thereafter while the Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease, including any renewal terms hereunder (any such occurrence, except for any requisition which by its

terms is for an indefinite period or is for a stated period which does not exceed the term of this Lease, being hereinafter called a Casualty Occurrence), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and the Assignee in regard thereto and shall pay the Casualty Value (as herein defined) of such Item in accordance with the terms hereof.

11.3. Payment for Casualty Loss. The Lessee, on the Fixed Rental payment date next following the date notice is given by the Lessee of a Casualty Occurrence with respect to any Item of Equipment, shall pay to the Lessor the rental installment due on such rental payment date for such Item of Equipment plus a sum equal to the Casualty Value of such Item of Equipment as of the Fixed Rental payment date next following such Casualty Occurrence. Upon (and not until) payment of the Casualty Value in respect of any Item of Equipment and the Fixed Rental installment due on such payment date, the obligation to pay rent for such Item of Equipment accruing subsequent to the Casualty Value payment date shall terminate.

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

11.5. Casualty Value. The Casualty Value of each Item of Equipment shall be an amount determined as of the Fixed Rental payment date next following the date of the Casualty Occurrence (and not the date of the Casualty Occurrence) equal to

- (a) that percentage of the Purchase Price of such Item of Equipment set forth in the Schedule of Percentages attached hereto as Schedule C opposite such date of determination, plus
- (b) with respect to a Casualty Occurrence occurring before the third, fifth or seventh anniversary of the date of the Certificate of Acceptance for such Item an amount equal to the percentage of the Purchase Price of such Item suffering a Casualty Occurrence set forth below:

<u>Anniversary of the date of the Certificate of Acceptance</u>	<u>Percentage of Purchase Price to be added</u>
Third	22.10433%
Fifth	14.736222%
Seventh	7.368111%

Reference is made to Section 11.3, providing that, on the date set for payment of Casualty Value with respect to any Item, Fixed Rental as well as Casualty Value is payable with respect to such Item.

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

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

## SECTION 12. ANNUAL REPORTS.

12.1. Duty of Lessee to Furnish. On or before May 1 in each year, commencing with the year 1978, the Lessee will furnish to the Lessor, the Trustor, the Assignee and the Investors an accurate statement, as of the preceding December 31 (a) showing the amount, description and numbers of the Items of Equipment then leased hereunder and the amount, description and road numbers of the railroad cars to which such Items are attached, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and

(b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced. At the request of the Lessor, the Trustor, the Assignee or an Investor the Lessee will promptly furnish to such party an accurate statement describing the insurance coverage, if any, maintained by the Lessee pursuant to Section 11.1 hereof.

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

12.3. Financial Reports. The Lessee will furnish to the Lessor at the same time reports are required to be furnished to the Investors hereinafter referred to, such reports as are required to be furnished to the Investors pursuant to Section 9 of the Finance Agreement.

#### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, remove from any unit of railroad rolling stock to which such Item of Equipment is attached and deliver possession of such Item of Equipment to the Lessor at such reasonable storage place on the lines of railroad operated by the Lessee as the Lessee may designate, and permit the Lessor to store such Item of Equipment at such place for a period not exceeding 90 days, and the Lessee at its expense shall transport the same at any time within such 90 day period to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; provided that the obligation of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. As to each such Item of Equipment so returned to Lessor, Lessee shall be in compliance with the provisions of Section 8 hereof. All movement, storage and maintenance of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain the insurance required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. The

assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment. All amounts earned in respect of the Equipment after the date of expiration of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event Equipment is not assembled, delivered and stored, as hereinabove provided, within 60 days after such expiration, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such Equipment for each such day exceeds the actual earnings received by the Lessor on such Equipment for each such day.

#### SECTION 14. DEFAULT.

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

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

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

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied; or

(d) Any representation or warranty made by the Lessee herein or in any statement or certificate furnished to the Lessor or its assigns pursuant to or in connection with this Lease, the Conditional Sale Agreement or the Finance Agreement shall be breached or proves untrue in any material respect as of the date of issuance or making thereof; or

(e) 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 Lessee and (unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such pro-

ceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees within 30 days after such appointment or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

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

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

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of such Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Equipment for any purpose whatever, but the Lessor, shall, nevertheless, have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by a fraction of which the numerator is such accrued number of days in such full rental period and the denominator is the total number of days in such full rental period) and also to recover forthwith from

the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following sums, with respect to each Item of Equipment then subject to this Lease, the Lessor, in its sole discretion, shall specify by written notice to the Lessee: (x) an amount equal to the excess, if any, of the Casualty Value for such Item, computed as of the rental payment date immediately preceding the Event of Default specified in such notice, over the rental which the Lessor reasonably estimates to be obtainable for such Item for the remainder of the term of this Lease after discounting such rental semi-annually to present value as of such preceding rental payment date at the rate of 6% per annum or (y) an amount equal to the excess, if any, of the Casualty Value for such Item as of such preceding rental payment date over the fair market value of such Item as of such preceding rental payment date or (z) a sum, with respect to each Item of Equipment, which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then fair rental value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of the Item during such period, such present worth to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages, other than rentals, and expenses including reasonable attorney's fees in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease.

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

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

SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.

15.1. Lessee's Duty to Return. If the Lessor or the Assignee shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. As to the Equipment so returned to Lessor, the Lessee shall be in compliance with the provisions of Section 8 hereof. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith remove such Equipment from any unit of railroad rolling stock to which such Equipment is attached and place such Equipment in such reasonable storage place on the Lessee's lines of railroad as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such reasonable storage place on the Lessee's lines of railroad without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor and during such period of storage the Lessee shall continue to maintain the insurance required by Section 11.1 hereof; and

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

All amounts earned in respect of the Equipment after the date of termination of this Lease shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the per diem interchange rate for such Equipment for each such day exceeds the actual earnings received by the Lessor on such Equipment for each such day.

15.2. Specific Performance. The removal, assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court 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 remove, assemble, deliver, store and transport the Equipment.

15.3. Lessor Appointed Lessee's Agent. Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whosoever shall be at the time in possession of such Item.

SECTION 16. ASSIGNMENTS BY LESSOR.

This Lease and all rent and other sums due and to become due hereunder have been assigned to the Manufacturer pursuant to Section 24 of the Conditional Sale Agreement and reassigned by the Manufacturer to the Assignee pursuant to the Assignment dated the date hereof, and all rent and other sums due and to become due hereunder shall be paid to the Assignee at 231 South La Salle Street, Chicago, Illinois 60693, Attention: Corporate Trust Division or at such other place as the Assignee shall specify in writing. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of the Assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in Lessor's title, or any interruption from whatsoever cause (other than from a wrongful act of the Assignee) in the use, operation or possession of the Equipment or any part thereof, or by reason of the default by the Lessor of any indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of the Assignee, the Lessee shall be unconditionally and absolutely obligated to pay the Assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) except as otherwise provided in Section 24 of the Conditional Sale Agreement, the Assignee shall have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of the Assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor.

It is understood and agreed that the right, title and interest of the Assignee is, by the express terms of the Conditional Sale Agreement, subject to the rights and interests hereunder of the Lessee in and to the Equipment.

SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

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

17.2. Use and Possession on Lines Other Than Lessee's Own. So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it (either alone or jointly) or by any corporation a majority of whose voting stock (i.e., having ordinary voting power for the election of a majority of its Board of Directors) is owned directly or indirectly by the Lessee, or upon lines of railroad over which the Lessee or such corporation has trackage or other operating rights or over which Equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of Items of Equipment 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. Notwithstanding the foregoing, the Lessee will not assign any Item of Equipment to service (including, without limitation, the regular operation and maintenance thereof) outside the United States of America. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

17.3. Merger, Consolidation or Acquisition of Lessee. Nothing in this Section 17 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation (which shall have duly assumed the obligations hereunder of Lessee) into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of the railroad of the Lessee, provided

that such assignees, successors or transferees will not, upon the effectiveness of such merger or consolidation or acquisition of properties, be in default under any provision of this Lease and that such merger or consolidation or acquisition of properties shall not alter in any way the Lessee's obligation to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

SECTION 18. OPINION OF LESSEE'S COUNSEL.

Prior to or concurrently with the delivery and acceptance of the first Item of Equipment hereunder, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee set forth in Section 3.4(b) of the Conditional Sale Agreement.

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

Anything to the contrary herein contained notwithstanding, any nonpayment of rentals due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay an amount equal to 9% per annum (or the lawful rate, whichever is less) on the overdue rentals, including rentals payable during any renewal term, and amounts expended for the period of time during which they are overdue or expended and not repaid.

SECTION 20. OPTIONS TO PURCHASE AND RENEW.

20.1. Purchase Option. Provided that the Lessee is not in default, the Lessee shall have the following option to purchase:

(a) The Lessee shall have the right to purchase all but not less than all of the Items of Equipment then leased hereunder at the expiration of the original term or of any renewal term pursuant to Section 20.2 hereof at a price equal to the Fair Market Value of such Items of Equipment (as hereinafter defined). The Lessee shall give the Lessor written notice 180 days prior to the end of the term of its election to exercise the purchase option provided for in this Section. Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds there current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing a warranty against liens or claims of persons claiming by,

through or under the Lessor except liens and claims which the Lessee assumed or is obligated to discharge under the terms of the Lease. Any such sale shall be on an "as is", "where is" basis without representation or warranty, express or implied, as to the conditions of the Equipment or any other matters.

(b) The Fair Market Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell.

(c) Notwithstanding any election of the Lessee to purchase as provided in this Section 20.1, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Items of Equipment purchased by the Lessee upon such date unless the purchase price has been agreed upon by the parties pursuant to this Section 20.1, in which event the amount payable under Section 11 hereof shall be the greater of the amount otherwise payable under said Section 11 or such purchase price.

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

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for additional renewal terms as the Lessee shall select upon and subject to the terms and conditions herein contained for the original term of this Lease; provided that the semiannual Fixed Rental payable for and during any such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 20.2.

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease.

20.3. Delivery of Equipment. Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 20, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

20.4. Determination of Fair Market Value or Fair Rental Value. If on or before 120 days prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value or the Fair Market Value, as the case may be, of the Items of Equipment, such value shall be determined in accordance with the foregoing definitions, respectively, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 20 days after such notice is given, and the two appraisers so appointed shall within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Items of Equipment within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Rental Value and/or Fair Market Value, as the case may be, and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

SECTION 21. MISCELLANEOUS.

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

If to the Lessor: Trust Company for USL, Inc.,  
as Trustee under Burlington  
Northern Trust No. 77-11  
1211 West 22nd Street  
Oak Brook, Illinois 60521

with a copy to:

United States Leasing  
International, Inc.  
633 Battery Street  
San Francisco, California 94111

Attention: Vice-President  
Lease Underwriting Group

If to the Lessee: Burlington Northern Inc.  
176 East 5th Street  
St. Paul, Minnesota 55101

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

If to the Assignee: Continental Illinois National  
Bank and Trust Company of  
Chicago  
231 South LaSalle Street  
Chicago, Illinois 60690

Attention: Corporate Trust Division

If to the Trustor: City National Bank  
404 North Roxbury Drive  
Beverly Hills, California 90210

Attention: Finance Division

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. A copy of any notice given to any of the above parties shall also be given to each of the other such parties.

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

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

21.4. Partial Invalidity. The unenforceability or invalidity of any provision or provisions of this Lease shall not render any other provision or provisions herein contained unenforceable or invalid.

21.5. Limitations of Liability. It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by Trust Company for USL, Inc., not individually or personally but solely as Trustee under the Trust Agreement in the exercise of the power and authority conferred and vested in it as such Trustee (and Trust Company for USL, Inc. hereby warrants that it possesses full power and authority to enter into and perform this Lease), that each and all of the representations, undertakings and agreements herein made on the part of the Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor or the Trustor, or for the purpose or with the intention of binding the Lessor or the Trustor personally, but are made and intended for the purpose of binding only the Trust Estate as defined in the Trust Agreement, that this Lease is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under the Trust Agreement, that actions to be taken by the Lessor pursuant to its obligations hereunder may, in certain instances, be taken by the Lessor only upon specific authority of the Trustor, that nothing herein contained shall be construed as creating any liability on the Lessor or the Trustor, individually or personally, or any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of, Trust Company for USL, Inc. or the Trustor, to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessee and by each and every person now or hereafter claiming by, through or under the Lessee, and that so far as Lessor or the Trustor, individually or personally are concerned, the Lessee and any person claiming by, through or under the Lessee shall look solely

to the Trust Estate as defined in the Trust Agreement for the performance of any obligation under this Lease. The term "Lessor" as used in this Lease shall include any trustee succeeding the Lessor as trustee under the Trust Agreement or the Trustor if the trust created thereby is revoked. Any obligation of the Lessor hereunder may be performed by the Trustor, and any such performance shall not be construed as revocation of the trust created by the Trust Agreement. Nothing contained in this Lease shall restrict the operation of the provisions of the Trust Agreement with respect to its revocation or the resignation or removal of the Trustee thereunder.

It is expressly understood and agreed by and between the Lessor and the Lessee and their respective successors and assigns that this Lease is executed by Burlington Northern Inc. in its corporate capacity and that nothing herein contained shall be construed as creating any liability on any incorporator or any past, present or future subscriber to the capital stock of, or stockholder, officer or director of Burlington Northern Inc. to perform any covenant either express or implied contained herein, all such liability, if any, being expressly waived by the Lessor and by each and every person now or hereafter claiming by, through or under the Lessor.

TRUST COMPANY FOR USL, INC., as  
Trustee under Burlington  
Northern Trust No. 77-11

By *Richard A. Co*  
Vice President

LESSOR

(Corporate Seal)

Attest:

*[Signature]*  
Secretary

BURLINGTON NORTHERN INC.

By *Frank H. Coyle*  
Its Executive Vice President -  
Finance and Administration

(Corporate Seal)

Attest:

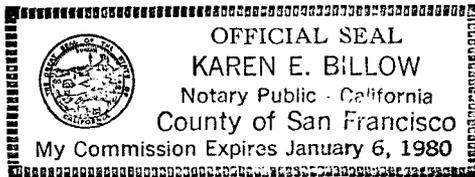
*G. Steinhilber*  
Assistant Secretary

This Lease and the Rent due and to become due hereunder have been assigned to, and are subject to a security interest in favor of, Continental Illinois National Bank and Trust Company of Chicago, as agent and assignee, pursuant to the Conditional Sale Agreement dated as of June 1, 1977 among Trust Company for USL, Inc., as Trustee under Burlington Northern Trust No. 77-11, Portec, Inc. (Paragon Division) and Burlington Northern Inc. and the related Agreement and Assignment. Information concerning such security interest may be obtained from Continental Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago, Illinois 60690, Attention:

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

On this 1<sup>st</sup> day of July, 1977, before me personally appeared RICHARD A. COGAN, to me personally known, who being by me duly sworn, says that he is an Vice President of Trust Company for USL, 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.

*Karen E. Billow*  
Notary Public



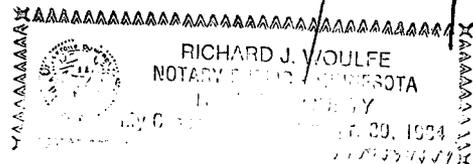
(Seal)

My Commission Expires:

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF RAMSEY )

On this 28<sup>th</sup> day of June, 1977, before me personally appeared Frank H. Coyne, to me personally known, who being by me duly sworn, says that he is the Executive Vice President - Finance and Administration 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.

*Richard J. Woulfe*  
Notary Public



(Seal)

My Commission Expires: