CRAVATH, SWAINE & MOORE

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CRAVATH, N. Y.
CRAVATH, PARIS
CRAVATH, LONDON E. C. 2

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JUL 13 53 PM '80
I. C. C.
FEE OPERATION BR.

11961
RECORDATION NO. ..... Filed 1425
JUL 1 1980 -4 00 PM
INTERSTATE COMMERCE COMMISSION

11961
RECORDATION NO. ..... Filed 1425
JUL 1 1980 -4 00 PM
INTERSTATE COMMERCE COMMISSION

No. C-183A192
Date JUL 1 1980
Fee $ 100.00
ICC Washington, D. C.

11961
RECORDATION NO. ..... Filed 1425
JUL 1 1980 -4 00 PM
INTERSTATE COMMERCE COMMISSION

11961
RECORDATION NO. ..... Filed 1425
JUL 1 1980 -4 00 PM
INTERSTATE COMMERCE COMMISSION

June 27, 1980

Burlington Northern Inc.
Lease Financing Dated as of June 2, 1980
9-7/8% Conditional Sale Indebtedness
Due December 30, 1996
[CS&M Ref.: 4657-003C]

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of Burlington Northern Inc. for filing and recordation counterparts of the following documents:

New number

1. (a) Conditional Sale Agreement dated as of June 2, 1980, between BameriLease, Inc., as Vendee, and General Motors Corporation (Electro-Motive Division), and General Electric Company, as Builders; and

— A

(b) Agreement and Assignment dated as of June 2, 1980, between General Motors Corporation (Electro-Motive Division), and General electric Company, as Builders, and Mercantile-Safe Deposit and Trust Company, as Agent.

— B

2. (a) Lease of Railroad Equipment dated as of June 2, 1980, between Burlington Northern Inc. and BameriLease, Inc., as Vendee; and

— C

(b) Assignment of Lease and Agreement dated as of

Eduardo J. Solis

June 2, 1980, between BameriLease, Inc., as Vendee, and Mercantile-Safe Deposit and Trust Company, as Agent.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

(2) Vendee-Lessor:

BameriLease, Inc.
P.O. Box 37130
San Francisco, California 94137

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

General Electric Company
2901 East Lake Road
Erie, Pennsylvania 16531

(4) Lessee:

Burlington Northern Inc.
176 East Fifth Street
St. Paul, Minnesota 55101

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of:

25 GMC-EMD 3,000 h.p. Model SD-40-2 diesel-electric-locomotives bearing identifying numbers BN 7211-7235, both inclusive, and 15 GE 3,000 h.p. Model C30-7 diesel-0electric locomotives bearing identifying numbers BN 5112-5126, both inclusive.

There is also enclosed a check for $100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Burlington Northern Inc.

Interstate Commerce Commission,
Washington, D. C. 20423

Attention of Agatha L. Mergenovich,
Secretary.

Encls.

37

[CS&M Ref. 4657-003C]

RECORDATION NO. 11961-A Filed 1425

JUL 1 1980 -4 00 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of June 2, 1980

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
GENERAL ELECTRIC COMPANY

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
As Agent

AGREEMENT AND ASSIGNMENT dated as of June 2, 1980, between GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the "Assignee".

WHEREAS each of the Builders and BameriLease, Inc., (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Vendee and Burlington Northern Inc. (the "Lessee") have entered into a Lease dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to such Builder under paragraph 4.3(a) of the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as

attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and deposit have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against its Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appro-

priate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon its Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment of a Builder, shall pay to such Builder an amount equal to the portion of the Purchase Price of its Equipment as shown on the invoice therefor then being settled for which, under the terms of paragraph 4.3(b) of said Article 4, is payable in installments, provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee at the offices of Messrs. Cravath, Swaine & Moore in New York, New York (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

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

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2.1 of the Lease;

(c) an invoice of such Builder for the units of such Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in the units of such Builder's Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Assignee under the Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to paragraph 4.3(a) of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

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

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by P.K. Hoglund
Vice President

[CORPORATE SEAL]

ATTEST: M. Scott
Assistant Secretary

GENERAL ELECTRIC COMPANY

by

[Corporate Seal]

Attest:

Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent

by
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 2, 1980.

BAMERILEASE, INC.,

by
Vice President

by
Assistant Treasurer

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this 26th day of June, 1980, before me personally appeared P. K. HOGLUND to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

T. K. Gorecki
Notary Public

[NOTARIAL SEAL]
My Commission expires
September 18, 1983

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is Manager Marketing-Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires

[CS&M Ref. 4657-003C]

AGREEMENT AND ASSIGNMENT

Dated as of June 2, 1980

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
GENERAL ELECTRIC COMPANY

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
As Agent

AGREEMENT AND ASSIGNMENT dated as of June 2, 1980, between GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the "Assignee".

WHEREAS each of the Builders and BameriLease, Inc., (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Vendee and Burlington Northern Inc. (the "Lessee") have entered into a Lease dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to such Builder under paragraph 4.3(a) of the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as

attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and deposit have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against its Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appro-

priate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon its Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment of a Builder, shall pay to such Builder an amount equal to the portion of the Purchase Price of its Equipment as shown on the invoice therefor then being settled for which, under the terms of paragraph 4.3(b) of said Article 4, is payable in installments, provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee at the offices of Messrs. Cravath, Swaine & Moore in New York, New York (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

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

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2.1 of the Lease;

(c) an invoice of such Builder for the units of such Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in the units of such Builder's Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Assignee under the Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to paragraph 4.3(a) of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

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

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

[CORPORATE SEAL]

Vice President

ATTEST:

Assistant Secretary

GENERAL ELECTRIC COMPANY

by

GENERAL MANAGER
LOCOMOTIVE MARKETING DEPARTMENT

[Corporate Seal]

Attest:

Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent

by
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 2, 1980.

BAMERILEASE, INC.,

by
Vice President

by
Assistant Treasurer

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this 27th day of June, 1980, before me personally appeared J.C. Dwyer, to me personally known, who being by me duly sworn, says that he is General Manager-Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, 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.

Judy Crandall
Notary Public

Judy Crandall, Notary Public
Lawrence Park Twp., Erie County, Penna.
My Commission Expires Jan. 16, 1984

[NOTARIAL SEAL]
My Commission expires

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires

[CS&M Ref. 4657-003C]

AGREEMENT AND ASSIGNMENT

Dated as of June 2, 1980

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
GENERAL ELECTRIC COMPANY

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
As Agent

AGREEMENT AND ASSIGNMENT dated as of June 2, 1980, between GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the "Assignee".

WHEREAS each of the Builders and BameriLease, Inc., (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Vendee and Burlington Northern Inc. (the "Lessee") have entered into a Lease dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to such Builder under paragraph 4.3(a) of the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as

attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and deposit have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against its Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appro-

priate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon its Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment of a Builder, shall pay to such Builder an amount equal to the portion of the Purchase Price of its Equipment as shown on the invoice therefor then being settled for which, under the terms of paragraph 4.3(b) of said Article 4, is payable in installments, provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee at the offices of Messrs. Cravath, Swaine & Moore in New York, New York (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

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

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2.1 of the Lease;

(c) an invoice of such Builder for the units of such Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in the units of such Builder's Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Assignee under the Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to paragraph 4.3(a) of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

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

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

Vice President

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

GENERAL ELECTRIC COMPANY

by

[Corporate Seal]

Attest:

Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent

by
~~Assistant~~ Vice President

[Corporate Seal]

Attest:

F H Gilbert
Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 2, 1980.

BAMERILEASE, INC.,

by
Vice President

by
Assistant Treasurer

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is Manager Marketing-Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss.:

On this 26th day of June, 1980, before me personally appeared G J Johnston, to me personally known, who being by me duly sworn, says that he is an ~~Assistant~~ Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, 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.

Florence H Collier
Notary Public

[NOTARIAL SEAL]
My Commission expires 7/1/82

[CS&M Ref. 4657-003C]

AGREEMENT AND ASSIGNMENT

Dated as of June 2, 1980

BETWEEN

GENERAL MOTORS CORPORATION
(Electro-Motive Division),
GENERAL ELECTRIC COMPANY

AND

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
As Agent

AGREEMENT AND ASSIGNMENT dated as of June 2, 1980, between GENERAL MOTORS CORPORATION (Electro-Motive Division) and GENERAL ELECTRIC COMPANY (collectively the "Builders" and severally the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Participation Agreement"), a copy of which has been delivered to each Builder, said Agent, as so acting, being hereinafter called the "Assignee".

WHEREAS each of the Builders and BameriLease, Inc., (the "Vendee") have entered into a Conditional Sale Agreement dated as of the date hereof (the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builders and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the "Equipment"); and

WHEREAS the Vendee and Burlington Northern Inc. (the "Lessee") have entered into a Lease dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment;

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to each Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

SECTION 1. Each Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to such Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to such Builder under paragraph 4.3(a) of the Conditional Sale Agreement;

(b) all the right, title and interest of such Builder in and to the Conditional Sale Agreement (except the right to construct and deliver its Equipment and the right to receive the payments specified in paragraph 4.3(a) thereof and reimbursement for taxes paid or incurred by such Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to such Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) of this paragraph, all such Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against such Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of such Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Vendee from its obligations to such Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of such Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as

attorney, hereby irrevocably constituted, for such Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of its Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and each Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. Neither Builder will deliver any Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement, the Lease, this Assignment and the Lease Assignment have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and deposit have occurred).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, such Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by such Builder of any obligation with respect to its Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by such Builder. Each Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by such Builder, such Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against its Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appro-

priate Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give to such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim. Each Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to its Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon its Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to the Equipment of a Builder, shall pay to such Builder an amount equal to the portion of the Purchase Price of its Equipment as shown on the invoice therefor then being settled for which, under the terms of paragraph 4.3(b) of said Article 4, is payable in installments, provided that the conditions specified in Paragraphs 7 and 8 of the Participation Agreement have been satisfied and there shall have been delivered to the Assignee at the offices of Messrs. Cravath, Swaine & Moore in New York, New York (with a copy to the Vendee) on or prior to such Closing Date, the following documents, in form and substance satisfactory to it and to Messrs. Cravath, Swaine & Moore, special counsel to the Assignee, in such number of counterparts as may be reasonably requested by said special counsel:

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

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment as contemplated by Article 3 of the Conditional Sale Agreement and §2.1 of the Lease;

(c) an invoice of such Builder for the units of such Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for such Builder, dated as of the Closing Date, addressed to the Assignee and the Vendee, to the effect that the aforesaid bill or bills of sale have been duly authorized, executed and delivered by such Builder and are valid and effective to vest in the Assignee the security interest of such Builder in the units of such Builder's Equipment, free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement, the rights of the Lessee under the Lease and the rights of the Assignee under the Assignment) arising from, through or under such Builder; and

(e) a receipt from such Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to such Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Participation Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to paragraph 4.3(a) of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the appropriate Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

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

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, 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. This Agreement shall be effective upon delivery of fully executed counterparts hereof to Messrs. Cravath, Swaine & Moore, at their offices in New York, New York. Each Builder shall be bound hereunder notwithstanding the failure of the other Builder to execute and deliver this Assignment or to perform its obligations hereunder.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by

Vice President

[CORPORATE SEAL]

ATTEST:

Assistant Secretary

GENERAL ELECTRIC COMPANY

by

[Corporate Seal]

Attest:

Attesting Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent

by
Assistant Vice President

[Corporate Seal]

Attest:

Corporate Trust Officer

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 2, 1980.

BAMERILEASE, INC.,

by
Vice President

by
Assistant Treasurer

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF PENNSYLVANIA, }
COUNTY OF ERIE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is Manager Marketing-Locomotive Marketing Department of GENERAL ELECTRIC COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires

STATE OF MARYLAND, }
CITY OF BALTIMORE, } ss.:

On this day of June, 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, 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.

Notary Public

[NOTARIAL SEAL]
My Commission expires