

# MOORE & VAN ALLEN, PLLC

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September 2, 1998

RECORDATION NO. 21620 FILED

VIA UPS NEXT DAY AIR

SEP 3 '98 1-06 PM

Secretary Vernon A. Williams  
Surface Transportation Board  
1925 K Street, NW  
Suite 700  
Washington, DC 20423

**RE: *Recordation of Memoranda of Lease Agreement dated as of August 1, 1998 for First Union Rail Corporation/Trinity Industries Leasing Company (the "Trinity Transaction") and Amendment Agreement No. 4 Lease Supplement No. 1, and Lease Supplement No. 2 all dated as of June 30, 1998, for Burlington Northern and Santa Fe Railway Company/First Union Commercial Corporation (the "Burlington Transaction")***

Dear Mr. Secretary:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) original Memoranda of Lease Agreement, dated as of August 1, 1998, (referencing the Trinity Transaction Railroad Car Net Lease Agreement and Rider No. 1, both dated as of August 1, 1998) and two (2) Amendment Agreements No. 4, two (2) Lease Supplements No. 1, and Lease Supplements No. 2, all dated as of June 30, 1998, (all referencing the Lease of Railroad Equipment dated as of October 1, 1979). Each is a primary document as defined in the Board's Rules for the Recordation of Documents.

A description of the railroad equipment covered by each of the enclosed documents is set forth on Schedule I (referencing the Trinity Transaction Railroad Car Net Lease Agreement and Rider No. 1), Schedule II (referencing the Burlington Transaction Lease Supplement No. 1), and Schedule III (referencing the Burlington Transaction Lease Supplement No. 2), attached hereto. Also enclosed is a check in the amount of \$104.00 payable to the order of the Surface Transportation Board covering the combined recordation fees.

Please return one (1) stamped original of each of the enclosed documents to me in the enclosed Business Reply Mail envelope.

Secretary Vernon A. Williams  
Surface Transportation Board  
September 2, 1998  
Page 2

If you have any questions regarding these documents or this matter, please do not hesitate to contact me at (704) 331-2444.

Respectfully,

MOORE & VAN ALLEN, PLLC

A handwritten signature in black ink, appearing to read "Stephen D. Pillow". The signature is fluid and cursive, with a large initial "S" and a distinct "P" at the end.

Stephen D. Pillow  
Legal Assistant

sdp  
Enclosures

cc: Robert V. Baker, Esq. (without enclosures)  
M. Matthew Plyler, Esq. (without enclosures)

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## AMENDMENT AGREEMENT NO. 4 SEP 3 '98 1-06 PM

AMENDMENT AGREEMENT NO. 4 dated as of June 30, 1998 between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Lessee") and FIRST UNION COMMERCIAL CORPORATION ("Lessor"), and is made to that certain Lease of Railroad Equipment dated as of October 1, 1979 (as amended, the "Lease") between Lessee (f/k/a Burlington Northern, Inc.) and Bamerilease Capital Corporation, the interest of Bamerilease Capital Corporation having been transferred by merger to BA Leasing & Capital Corporation and thereafter having been acquired by purchase and assignment by Lessor.

**RECITALS:**

A. The equipment (the "Equipment") subject to the Lease is comprised of two different types of locomotives, being (i) EMD 3000 HP Model SD40-2 Locomotives (the "SD40-2 Equipment") and (ii) GE 3,000 HP Model C30-7 Diesel-Electric Locomotives (the "C30-7 Equipment," and together with the SD40-2 Equipment, the "Equipment").

B. Lessor desires to transfer its interest in the C30-7 Equipment and the related Lease and the other operative documents (the "Operative Documents," and to the extent relating to the C30-7 Equipment, the "Transaction Documents") executed and delivered in connection therewith, in each case, with respect to, and to the extent relating to, (and only to the extent relating to) the C30-7 Equipment.

C. Lessee desires to accommodate Lessor's desire to sell the C30-7 Equipment and the Transaction Documents by bifurcating the Equipment onto separate Lease Supplements (the "Lease Supplements") in each case attached hereto, and making such other amendments to the Lease as set forth below:

NOW, THEREFORE, in consideration of the mutual promises made herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby agree as follows:

1. Lease Supplements. The terms and conditions of the Lease shall apply in full force and effect with respect to each of the two Lease Supplements attached hereto and incorporated herein by reference. References in the Lease to "Units" shall mean the Units described in either Lease Supplement.

2. Amendment to Section 15.1. Section 15.1 of the Lease shall not be applicable with respect to an assignment or transfer, as the case may be by Lessor to Trinity Industries, Inc. (i) of its right and obligations under the Lease as such rights and obligations relate only to Lease Supplement No. 1 attached hereto and the Equipment described therein and (ii) its right, title and interest in the Equipment described in Lease Supplement No. 1 (the "Permitted Transfer").

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Except for the Permitted Transfer, no other assignment shall be made except in accordance with the terms of Section 15.1 of the Lease.

3. No Further Amendment. Except as amended hereby, the Lease shall remain in full force and effect.

4. Counterpart. This Amendment Agreement No. 4 may be executed in several counterparts, such counterparts together constituting but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment Agreement No. 4 to be executed and delivered by their respective officers, duly authorized, as of the date first set forth above.

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY (formerly Burlington Northern Inc.)

By: *Paul J. Weyandt*  
Name: Paul J. Weyandt  
Title: Asst. Vice President-Finance and Asst. Treasurer

STATE OF Illinois

COUNTY OF Cook

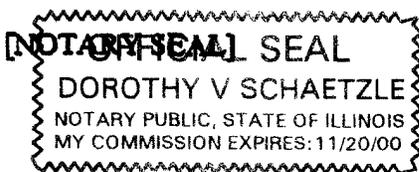
I, Dorothy V. Schaetzle, a Notary Public of the aforesaid County and State, do hereby certify that personally appeared before me this day and acknowledged that (s)he is the AVP-Fin. & Asst. Treas. of THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its such officer, and attested by herself/himself as such officer and sealed with its common corporate seal.

Witness my hand and notarial seal this 4<sup>TH</sup> day of AUGUST, 1998.

*Dorothy V. Schaetzle*  
Notary Public

My Commission Expires:

11/20/00



FIRST UNION COMMERCIAL CORPORATION

ATTEST:

Linda Baxter  
Assistant Secretary

By:

PAUL W. VAN WIE  
Title: SENIOR VICE PRESIDENT

STATE OF North Carolina

COUNTY OF Iredell

I, Lisa Knox Carver, a Notary Public of the aforesaid County and State, do hereby certify that personally appeared before me this day and acknowledged that (s)he is the Asst. Secretary, of FIRST UNION COMMERCIAL CORPORATION, a North Carolina corporation, and that by authority duly given and as an act of the corporation, the foregoing instrument was signed in its name by its Senior Vice Pres., and attested by ~~herself~~ himself as Asst. Secretary, and sealed with its common corporate seal.

Witness my hand and notarial seal this 4<sup>th</sup> day of August, 1998.

Lisa Knox Carver  
Notary Public

My Commission Expires:

July 7, 2002

[NOTARY SEAL]

