

0100492013

**PRESTON
GATES ELLIS
& ROUVELAS
MEEDS**

ATTORNEYS AT LAW

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RECORDATION NO. 19176-G
FILED 1995

JAN 18 1995 -2 12 PM

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WILLIAM A. SHOOK
RICHARD P. REGAN
E. BOYD HOLLINGSWORTH, JR. *
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Government Affairs Counselors

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Senior Advisor
on Federal Affairs
and International Trade

* Admitted only in jurisdictions
other than the District of Columbia

January 18, 1995

VIA HAND DELIVERY

The Honorable Vernon A. Williams
Secretary
Interstate Commerce Commission
12th Street and Constitution Ave., N.W.
Washington, D.C. 20423

Dear Secretary Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) and 49 C.F.R. Part 1177 are two (2) executed copies of a Locomotive Operating Lease Agreement ("Lease"), dated as of October 31, 1994. This Lease is a secondary document related to a Non-Recourse Lease Assignment originally filed with the Commission under Recordation Number 19176.

The names and addresses of the parties executing the Lease are:

Lessor: Electro-Motive Division,
General Motors Corporation
9301 W. 55th Street
La Grange, Illinois 60525

Lessee: Burlington Northern Railroad Company
2800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

A description of the locomotives covered by the enclosed document is attached to the Lease as Schedule A.

A PARTNER IN PRESTON GATES & ELLIS

ANCHORAGE, AK
(907) 276-1969
FAX: (907) 276-1365

COEUR d'ALENE, ID
(208) 667-1839
FAX: (208) 667-3567

LOS ANGELES, CA
(213) 892-4700
FAX: (213) 624-5924

PORTLAND, OR
(503) 228-3200
FAX: (503) 248-9085

SEATTLE, WA
(206) 623-7580
FAX: (206) 623-7022

SPOKANE, WA
(509) 624-2100
FAX: (509) 456-0146

TACOMA, WA
(206) 272-1500
FAX: (206) 272-2913

Country Parts - Jul 50



Interstate Commerce Commission
Washington, D.C. 20423-0001

1/18/95

Office Of The Secretary

Alan J. Schaeffer
Preston Gates Ellis & Rouvelas Meeds
1735 New York Avenue, NW., Ste. 500
Washington, DC. 20006-4759

Dear sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 1/18/95 at 2:45PM, and assigned recordation number(s). 19176-G.

Sincerely yours,

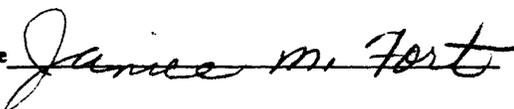

Vernon A. Williams
Secretary

Enclosure(s)

(0100492013)

\$ 21.00 The amount indicated at the left has been received in payment of a fee in connection with a document filed on the date shown. This receipt is issued for the amount paid and in no way indicates acknowledgment that the fee paid is correct. This is accepted subject to review of the document which has been assigned the transaction number corresponding to the one typed on this receipt. In the event of an error or any questions concerning this fee, you will receive a notification after the Commission has had an opportunity to examine your document.

Signature



LOCOMOTIVE OPERATING LEASE AGREEMENT

THIS LEASE, made and entered into as of this 31st day of October, 1994, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Lessor", and the Burlington Northern Railroad Company, a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AND COVENANT AS FOLLOWS:

REGISTRATION NO. 19176-6 FILED 1425

JAN 18 1995 -2 12 PM

FEDERAL RAILROAD COMMISSION

1. Lease:

Lessee agrees to lease from Lessor the locomotives described in Schedule A hereto together with all replacement parts, additions, repairs and accessories incorporated therein and/or affixed thereto (the "Locomotives") for use by Lessee in revenue service.

Lessee will cause the Locomotives to be kept numbered with the identification numbers set forth in **Schedule A** and will keep and maintain, permanently and conspicuously marked on each side of each Locomotive, in letters not less than one inch in height, the words "General Motors Corporation, Electro-Motive Division Owner", with appropriate changes thereof as from time to time may be required by law, in the opinion of Lessor, in order to protect the Lessor's title to and interest in the Locomotive and the rights of the Lessor under this Lease. Lessee will not place any Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed. Lessee will not change the identification number of any Locomotive unless and until a statement of the new number therefor is delivered to Lessor and filed in all public offices where this Lease may be filed.

Lessee will not allow the name of any person, association or corporation to be placed on any Locomotive as a designation that might be interpreted as a claim of ownership.

2. Rent/Term:

- (a) Lessor shall deliver the Locomotives in good operating condition, and in compliance with all applicable rules and regulations as set forth by the Federal Railroad Administration (FRA). Rent with respect to each Locomotive shall commence when it is delivered to an interchange point on Lessee's lines designated by Lessor, and shall continue for the period stated in **Schedule B** hereto. The Daily Rental shall be determined in accordance with **Schedule B** hereto.
- (b) Delinquent installments of rent shall bear interest at the rate of 1-1/2% per month if not prohibited by law, otherwise at the highest lawful contract rate.
- (c) Lessee agrees to store all or any portion of the Locomotives in accordance with Lessor's Maintenance Instruction M.I. 1726B, including but not limited to covering the exhaust stack, completely draining the water from the locomotive systems, and protecting the batteries from freezing, for a ninety (90) day period after termination of this Lease, at Lessor's request, free of any charge to Lessor.
- (d) Lessee shall not be entitled to any reduction of rent nor any setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever,

including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, nor shall this Lease terminate nor the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of any Locomotive or damage to or loss of possession or use or destruction thereof from whatever cause and of whatever duration except as otherwise provided herein.

3. Warranties and Representations:

Lessee acknowledges that Lessor has no knowledge or information as to the condition or suitability of the Locomotives for Lessee's purposes and Lessor's decision to enter into this Lease is made in reliance on Lessee's undertakings herein. LESSOR MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND RESPECTING THE LOCOMOTIVES, WHETHER STATUTORY, WRITTEN, ORAL OR IMPLIED, AND LESSOR HAS NOT MADE AND SHALL NOT BE DEEMED BY VIRTUE OF HAVING EXECUTED THIS LEASE TO HAVE MADE ANY REPRESENTATION OR WARRANTY AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESIGN OR CONDITION OF THE LOCOMOTIVES, ALL OF WHICH ARE EXPRESSLY DISCLAIMED AND LESSOR SHALL NOT BE LIABLE, IN CONTRACT, OR TORT BECAUSE OF ANY DEFECT WHETHER HIDDEN, LATENT, OR OTHERWISE DISCOVERABLE OR NONDISCOVERABLE RESPECTING ANY LOCOMOTIVE. Lessee accordingly agrees not to assert any claim whatsoever against Lessor based thereon. Lessee further agrees, regardless of cause, not to assert any claim whatsoever against Lessor for loss of anticipatory profits or consequential damages.

4. Payment of Rent:

Lessee shall transfer funds in payment of the monthly rent to the following account (or third party if instructed to do so by Lessor) within thirty (30) days of receipt of an invoice therefor:

Electro-Motive Division of General Motors Corporation
c/o 1st National Bank of Chicago
Account No. 50-63191 "Rental Income Account"
Attn: Assistant Comptroller

5. Recordkeeping; Inspection:

Lessee agrees to keep and maintain and make available to Lessor for the duration of the lease term and any renewal terms, and for not less than six (6) months following the expiration of this Lease any and all records of Lessee's use, operation, inspection, repairs and maintenance of the Locomotives while subject to this lease as shall be normally maintained by Lessee and as such may be reasonably requested by Lessor. Lessee further agrees to send Lessor one copy monthly of Locomotive maintenance and repair records covering the Locomotives subject to this lease. Lessor's agents shall have the right at all reasonable times to go upon the property of Lessee to inspect the Locomotives.

6. Casualty/Condemnation:

- (a) Lessee shall notify Lessor in the event any Locomotive shall be lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use from any cause whatsoever, other than

acts or omissions of Lessor (any such occurrence being hereinafter called a "Casualty Occurrence"). On the payment date next following the date of any Casualty Occurrence, Lessee shall (i) pay to Lessor any unpaid rent due on or prior to such date, and (ii) either pay Lessor the Casualty Value of the Locomotive as stated in **Schedule A** hereto or by mutual agreement, replace such Locomotive with another of like model, and condition with the same accessories free and clear of all liens and encumbrances.

- (b) Upon payment of any Casualty Value or delivery of any substitute Locomotive, the terms of this Lease shall no longer apply to the Locomotive which was the subject of such payment or substitution and title to and rights in such Locomotive shall thereupon vest in the Lessee; provided, however, the Lessor shall have the option, to be exercised within fifteen (15) days after any such payment or substitution by Lessee, to retain the subject Locomotive upon payment to Lessee of the scrap or salvage value thereof, to be determined by mutual agreement or, failing such agreement, by the average of the bids thereon by three independent parties. Lessee shall furnish Lessor with certificates or other evidence of compliance with this Section 6 as may be reasonably required.
- (c) In the event that a Locomotive is taken or requisitioned by condemnation or otherwise by any governmental entity for a period which shall exceed the remaining term hereof, Lessor shall relieve Lessee from rental payments for such Locomotive effective with the date it was first requisitioned or condemned and settle with such governmental entity upon appropriate consideration for such taking. Lessee shall immediately pay over to Lessor any proceeds which it may receive in consideration of any such taking.

7. Indemnity:

Lessee agrees to indemnify, protect and hold harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, and reasonable expenses in connection therewith, including, but not limited to, reasonable counsel fees arising from: (a) Lessee's failure to promptly perform any of its obligations under Sections 2, 6, 8 or 16 hereof, or (b) injury to persons or property resulting from or based upon the actual or alleged use, or transportation of any Locomotive hereunder, or (c) any repair, servicing or adjustment of any Locomotive or any delay in providing or failure to provide any thereof, or (d) any interruption of service or loss of business. Lessee shall also, at its own cost and expense, defend any and all suits which may be brought against Lessor upon any such liability or claim and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action provided Lessor gives Lessee written notice of any such claim or demand. Lessee shall not be required to indemnify Lessor for any loss, liability or expense resulting from the or breach of any repair obligation of Lessor hereunder or gross negligence or willful misconduct of Lessor or from claims for strict liability in tort. The indemnities arising under this section shall continue in full force and effect notwithstanding the full payment of all other obligations hereunder or the expiration or termination hereof.

Lessee agrees to prepare and deliver to Lessor, upon request and within a reasonable time prior to the required filing date (or to the extent permissible, file on behalf of Lessor) any and all reports (other than tax returns) to be filed by Lessor with any regulatory authority by reason of Lessor's ownership or lease of the Locomotives.

8. Compliance with Law - Repair and Maintenance:

Lessee shall comply with all applicable FRA requirements, the interchange rules of the Association of American Railroads and all other applicable governmental laws, regulations and requirements with respect to the use, maintenance and operation of the Locomotives during this Lease. Lessee shall use the Locomotives only in the manner for which they are designed and intended, so as to subject them only to ordinary wear and tear. Nothing contained herein shall be construed as requiring the Lessee to make modifications, alterations, or additions to or removal from the Locomotive, in order to comply with applicable laws and regulations.

The respective obligations of the parties for maintenance of the Locomotives are set forth in **Schedule C**. Except for Lessor's obligations thereunder, nothing shall be construed to limit the obligation of Lessee, at its own cost and expense, to maintain and service the Locomotives in accordance with prudent industry practice and applicable manufacturer recommendations so that they will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with all applicable laws and regulations, and (c) suitable for immediate use in line-haul service. The Locomotives shall be maintained or scheduled for maintenance on a basis equivalent to Lessee's customary maintenance schedule for similar equipment. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor; any failed or worn parts removed by Lessee in connection with any of the foregoing activities become Lessee's property, provided, however, that Lessee may remove from the Locomotives any communications, train control, telemetry, recording and other specialized equipment, which Lessee paid for and installed, but only if such removal may be accomplished without damage to the Locomotives.

9. No Purchase Option: Delivery of Locomotives to Lessor:

Lessee has no option to purchase the Locomotives. Upon any termination of this Lease or at the end of any term of free storage that may be requested by Lessor as provided in Section 2 hereof, Lessee shall deliver the Locomotives to an interchange point on Lessee's property designated by Lessor. The Locomotives are to be clean and in good working order, with no FRA defects.

10. Assignment by Lessee:

Lessee shall not assign or sublet its interest under this Lease, or any part hereof, or permit the use or operation of the Locomotives by any other person, firm or corporation without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than the Lessee's under standard run through arrangements provided, however, that a Locomotive may not be so operated or used outside the United States.

Locomotives may be operated in Canada if Lessee makes all filings with Canadian national, provincial and local governmental entities necessary to protect Lessor's ownership interest in the Locomotives. Lessee agrees to take no action to jeopardize Lessor's ownership interest and to indemnify Lessor against any increased cost, expense, liability, or claim, including taxes, that may arise because of such use in Canada.

Notwithstanding any assignment or sublet as provided in this Section, Lessee shall not be relieved of its obligations hereunder without the written consent of the Lessor.

11. Assignment by Lessor:

Lessor may at any time assign its rights and obligations hereunder. In such event Lessor's assignee shall have, to the extent provided in the assignment, the rights, powers, privileges and remedies of Lessor hereunder; provided, however, that no assignment shall relieve Lessor of its obligations under **Schedule C**.

12. Notices:

Unless otherwise specifically provided, any notices to be given under this Lease or any other communications between the parties shall be given by certified mail, postage prepaid in the following manner:

(a) Notices from Lessor to Lessee shall be sent to:

**Burlington Northern Railroad Company
2800 Continental Plaza
777 Main Street
Forth Worth, Texas 76102
Attention: System Chief Mechanical Officer**

or other address that Lessee may indicate by written notice to Lessor.

(b) Notices from Lessee to Lessor shall be sent to:

**Electro-Motive Division
General Motors Corporation
9301 W. 55th Street
La Grange, Illinois 60525
Attention: Manager of Lease Locomotive Operations, Dept. 785**

13. Quiet Enjoyment:

So long as Lessee complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

14. Protection of Lessor's Title:

Lessor may, at its option, require Lessee to file this Lease with the Interstate Commerce Commission and elsewhere to protect Lessor's title to the Locomotives. Lessee will, from time to time, execute, acknowledge and deliver to Lessor any and all further instruments reasonably requested by Lessor, for the purpose of protecting Lessor's title to the Locomotives.

15. Taxes and Liens:

Lessee agrees to assume responsibility for, to pay, and to indemnify and hold harmless Lessor from and against all applicable taxes, levies, assessments, and other governmental charges or withholdings of any nature levied or assessed by any federal or state governmental taxing authority upon or with respect to the Locomotives, or the use of the Locomotives under the terms hereof, and which are payable solely and directly on account of the leasing of the Locomotives by Lessee, including, but

not limited to, any ad valorem taxes, license or registration fees, and sales taxes, provided, however, that Lessee shall not be responsible for (1) any tax on, based on, measured by, or with respect to net or gross income, capital, franchises, excess profits or conduct of business of Lessor, and (2) any sales, use or other taxes or charges levied or assessed directly or indirectly in connection with Lessor's acquisition of the Locomotives (whether such acquisition is by sale or lease), or the use, consumption, manufacture, disposition, substitution or storage of the Locomotives. Lessee will be under no obligation to pay any such taxes or other charges so long as Lessee in good faith and by appropriate legal or administrative proceedings contest the validity or amount thereof or directs Lessor to contest the validity or amount thereof, which contest Lessor so agrees to undertake at Lessee's cost, and the nonpayment thereof does not adversely affect the title, property or rights of Lessor in or to any Locomotive. Lessee will not be responsible for any such amounts, and any interest or penalties thereon, if they are imposed as a result, directly or indirectly, of Lessor's act or failure to act or misrepresentation or omission. To the extent that it is legally permissible, Lessee shall timely prepare and file all reports and returns which are requested to be made with respect to any obligation of Lessee arising out of this Paragraph 15.

16. Performance Obligations of Lessee by Lessor:

In the event that Lessee shall fail duly and promptly to perform any of its obligations hereunder, the Lessor may, at its option, perform same for the account of Lessee without thereby waiving such default. Any amount paid or expense (including reasonable attorneys' fees), incurred by the Lessor in such performance, together with interest at the lesser of 1-1/2% per month or the highest amount allowed by law thereon until paid, shall be payable by the Lessee upon demand as additional rent hereunder.

17. Lessee's Covenants:

Lessee will, during the term of this Lease: (a) defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives arising out of Lessee's lease or use of the Locomotives pursuant to this Lease Agreement; (b) do everything necessary or expedient to preserve or perfect the Lessor's interest in the Locomotives except in the event of a breach of Lessor's obligations under Section 13; (c) not misuse, fail to maintain, secrete, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Section 10 hereof; and (d) permit Lessor to enter upon Lessee's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives. The provisions of this Section shall survive the termination of this Lease.

18. Default:

- (a) An event of default shall occur if Lessee:
 - (i) fails to pay when due any installment of rent and such failure continues uncured for ten (10) days after written notice thereof to Lessee by Lessor;
 - (ii) fails in any of its obligations hereunder and such failure continues uncured for fifteen (15) days after written notice thereof to Lessee by Lessor;
 - (iii) ceases doing business as a going concern;
 - (iv) files a voluntary petition in bankruptcy or files a petition seeking reorganization,

composition, readjustment, liquidation, dissolution or similar arrangement or files an answer admitting the material allegations of a petition filed against it for such purpose.

- (v) consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of any substantial part of its assets;
 - (vi) fails to have any proceeding seeking reorganization, arrangement, readjustment, liquidation, dissolution or the appointment of any trustee, receiver or liquidator of any part of its assets dismissed or vacated within sixty (60) days; or
 - (vii) attempts to remove, sell, transfer, encumber, part with possession or sublet any Locomotive or any part thereof in a manner prohibited hereunder.
- (b) Upon the occurrence of an event of default, Lessor, at its option, may:
- (i) declare all sums due and to become due hereunder immediately due and payable;
 - (ii) proceed by appropriate court action to enforce performance by the Lessee of any and all covenants hereof and to recover damages for the breach thereof;
 - (iii) demand that Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at such place as Lessor may designate; or
 - (iv) without notice or legal process, enter into any premises of or under control of Lessee or any agent of Lessee where any Locomotive may be and retake all or any item thereof, in accordance with applicable law, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for damages related to any such retaking.
- (c) If any statute governing any proceeding hereunder specifies the amount of Lessor's deficiency or other damages for breach of this Lease by the Lessee, Lessor shall be entitled an amount equal to that allowed under such statute.
- (d) Lessor's remedies hereunder shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. Lessor shall, moreover, be entitled to all rights provided for in any bankruptcy act, including the right to take possession of any Locomotive upon any event of default hereunder, regardless of whether Lessee is in reorganization.
- (e) No failure or delay by Lessor in exercising, any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege by Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

19. Choice of Law:

This Lease shall be governed in all respect by the Law of the State of Illinois and shall be deemed to be entered into in the State of Illinois.

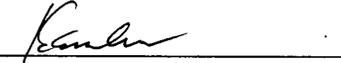
20. Miscellaneous:

- (a) All transportation charges associated with delivering and returning the Locomotives, shall be borne by Lessee.
- (b) If any part hereof is contrary to, prohibited by or deemed invalid under applicable laws or regulations of any jurisdiction, such provision shall be inapplicable and deemed omitted but shall not invalidate the remaining provisions hereof.
- (c) This Lease is irrevocable for the full term hereof.
- (d) This Lease and **Schedules A, B, and C** hereto constitute the entire agreement between the parties concerning the Lease of the Locomotives and no modification hereof shall be effective unless reduced to writing and signed by authorized representatives of the parties.

IN WITNESS WHEREOF the parties hereto intending to be legally bound thereby have executed this Agreement as of the date first above written.

Attest: 

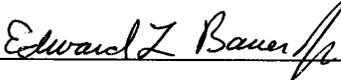
General Motors Corporation
Electro-Motive Division

By: 

Title: ASSISTANT SECRETARY

Burlington Northern Railroad

Attest: 

By: 

Title: System Chief Mech Officer

State of Illinois)
County of Cook)

On this _____ day of _____, 1994, before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is a representative of Electro-Motive Division, General Motors Corporation, that the instrument was signed on behalf of such 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 such corporation.

Notary Public

My commission expires:

State of TEXAS)
County of TARRANT)

On this 22ND day of DECEMBER, 1994, before me personally appeared EDWARD L. BAUER, JR., to me personally known, who, being by me duly sworn, did say that he is a representative of the BURLINGTON NORTHERN RAILROAD, that the instrument was signed on behalf of such 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 such corporation.

Diane L. Suchy
Notary Public

My commission expires:

SEPTEMBER 24, 1996

SCHEDULE A
LEASED LOCOMOTIVES
Casualty Values

<u>Road Number</u>	<u>Model</u>	<u>Casualty Value</u>
120	BL20-2	\$650,000
121	BL20-2	650,000
122	BL20-2	650,000
741	GP38-2	400,000
743	GP38-2	275,000
745	GP38-2	275,000
747	GP38-2	275,000
748	GP38-2	275,000
752	GP38-2	275,000
753	GP38-2	275,000
756	GP38-2	275,000
758	GP38-2	400,000
759	GP38-2	275,000
760	GP38-2	400,000
761	GP38-2	275,000
762	GP38-2	275,000
767	GP38-2	275,000
770	GP38-2	275,000
771	GP38-2	400,000
776	GP38-2	275,000
778	GP38-2	275,000
779	GP38-2	275,000
780	GP38-2	275,000
781	GP38-2	275,000
783	GP38-2	400,000
785	GP38-2	275,000
787	GP38-2	275,000
789	GP38-2	275,000
791	GP38-2	275,000
792	GP38-2	275,000
797	GP38-2	400,000
798	GP38-2	275,000
799	GP38-2	275,000
802	GP38-2	275,000
804	GP38-2	275,000
807	GP38-2	275,000
808	GP38-2	400,000
824	GP38-2	400,000
826	GP38-2	400,000
827	GP38-2	275,000
838	GP38-2	400,000

SCHEDULE B

LEASE TERM, DAILY RENTAL RATE, AND OPTIONS

Lease Term

The lease term with respect to each Locomotive delivered pursuant to this Lease shall commence on November 1, 1994 and end April 30, 1995.

Rent

The daily rent for each Locomotive shall be as follows:

<u>Model</u>	<u>Daily Rent</u>
BL20-2	\$225.00
GP38-2	225.00

Lessor will abate rents due for any Locomotive(s) which remains in failed status for more than three days due to a failure which is the Lessor's responsibility as outlined in **Schedule C**.

Options:

Lessee's Option to Renew

Upon notification from Lessee to Lessor within thirty days of the Lease expiration, the Lessee may indicate desire to renew this Lease at the then fair market value daily rental rate for a mutually agreeable term.

SCHEDULE C

Maintenance responsibilities for the Locomotives are as follows:

Lessee shall:

1. Comply with all safety and environmental regulations, directives and instructions of the FRA and all governmental authorities regardless upon whom such requirements are, by their terms, nominally imposed, and keep the Locomotives in such compliance.
2. Be responsible for all material and labor required to perform:
 - (a) Scheduled and preventative maintenance in accordance with EMD Maintenance Instructions including but not limited to M.I. 1777, and its supporting documentation.
 - (b) Failure repairs (other than those which are Lessor's responsibility as specified below).
 - (c) Wheel truing and replacement.
 - (d) Replace lost or stolen parts.
3. Use its best efforts to purchase replacement materials from Lessor.
4. Use fuel, lubricants, and coolant satisfying EMD Maintenance Instructions 1748, 1750, 1752, 1756, and 1764, and Lessee's maintenance schedules.

Lessor at its sole expense shall:

During the initial 6 months of this Lease, the Lessor will provide a replacement component to repair any major component failure which is not caused by improper use, modification or lack of preventative maintenance by Lessee. A major component failure is defined as one involving the replacement or removal of:

- (1) The following engine components:
 - (i) Crankshaft
 - (ii) Blowers/supercharger
 - (iii) More than four (4) Power Assemblies at one shopping
 - (iv) Engine gear trains
- (2) A Main Generator/Alternator
- (3) The following Traction Motor Components:
 - (i) Armature, Interpole, and/or main field coil grounds
 - (ii) Armature Bearing Failures
 - (iii) "Bird Nested" Armature

State of Illinois)
County of Cook) ss.

On this 22nd day of December, 1994, before me personally appeared Keith A. McCanless, to me personally known, who, being by me duly sworn, did say that he is a Assistant Secretary of Electro-Motive Division, General Motors Corporation, that the instrument was signed on behalf of such 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 such corporation.



Notary Public

My commission expires:



State of _____)
County of _____) ss.

On this _____ day of _____, 19__, before me personally appeared _____, to me personally known, who, being by me duly sworn, did say that he is a _____ of _____, that the instrument was signed on behalf of such 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 such corporation.

Notary Public

My commission expires:
