

ALVORD AND ALVORD.  
ATTORNEYS AT LAW  
918 SIXTEENTH STREET, N.W.  
SUITE 200  
WASHINGTON, D.C.

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

20006-2973

OF COUNSEL  
URBAN A. LESTER

(202) 393-2266

FAX (202) 393-2156

December 1, 1994

RECORDATION NO. 14549-F FILED 1425

DEC 1 - 1994 - 12 35 PM

INTERSTATE COMMERCE COMMISSION

Mr. Vernon A. Williams  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are four (4) executed copies of an Assignment and Assumption Agreement, dated as of December 1, 1994, a secondary document as defined in the Commission's Rules for the Recordation of Documents under 49 C.F.R. Section 1177.

The enclosed document relates to the Lease of Railroad Equipment filed with the Commission under Recordation Number 14549.

The names and addresses of the parties to the enclosed document are:

Assignor: Cargill Leasing Corporation  
6000 Clearwater Drive  
Minnetonka, Minnesota 55343-9497

Assignee: USL Capital Corporation  
733 Front Street  
San Francisco, California 94111

A description of the railroad equipment covered by the enclosed document is:

332 railcars within the series DEEX 7601 through DEEX 7966.

RECEIVED  
OFFICE OF THE  
SECRETARY  
DEC 1 12 32 PM '94  
LICENSING BRANCH

Mr. Vernon A. Williams  
December 1, 1994  
Page 2

Also enclosed is a check in the amount of \$21.00 payable to the order of the Interstate Commerce Commission covering the required recordation fee.

Kindly return one stamped copy of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read "R. Alvord", written in a cursive style.

Robert W. Alvord

RWA/bg  
Enclosures

Interstate Commerce Commission  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

NO DECEMBER 1, 1994

ROBERT W. ALVORD  
ALVORD & ALVORD  
918 16TH ST NW SUITE 200  
WASHINGTON DC 20006-2973

Dear MR. ALVORD:

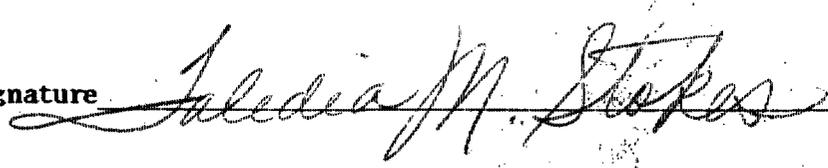
The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/1/94 at 12:35PM, and assigned recordation number(s) 14549-F and 18036-F.

Sincerely yours,

  
Vernon A. Williams  
Secretary

Enclosure(s)

\$ 42.00 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 

DEC 1 - 1994 - 12 35 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT, dated as of December 1, 1994 (this "Agreement") between CARGILL LEASING CORPORATION, a Delaware corporation ("the Seller") and USL CAPITAL CORPORATION, a Delaware corporation ("Buyer").

W I T N E S S E T H

WHEREAS, Seller and Buyer are parties to a certain Asset Purchase Agreement dated as of September 1, 1994 (the "Purchase Agreement");

WHEREAS, the Purchase Agreement provides, among other things, for the execution and delivery of an assignment and assumption agreement substantially in the form hereof to effect the sale of the Assets (capitalized terms used herein and not otherwise defined herein shall have the meanings assigned thereto in Article 1 of the Purchase Agreement) contemplated hereby and by the Purchase Agreement; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of Seller's right, title and interest in and to the Assets on the terms and conditions, and subject to the limitations and exclusions, set forth herein and in the Purchase Agreement;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Sale and Assignment. (a) Seller does hereby assign, transfer, sell and convey unto Buyer all of Seller's right, title and interest in and to the Assets, subject to Section 3 hereof.

(b) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER CONCERNING THE ASSETS INCLUDING, WITHOUT LIMITATION, THE SELECTION, QUALITY, OR CONDITION THEREOF, OR, MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OPERATION, PERFORMANCE OR MAINTENANCE THEREOF OR PATENT INFRINGEMENT OR THE LIKE, EXCEPT, IN EACH CASE, AS IS SPECIFICALLY THE SUBJECT OF A REPRESENTATION OR WARRANTY BY THE SELLER SET FORTH IN THE PURCHASE AGREEMENT OR IN SECTION 1(c) HEREOF.

(c) Seller represents, warrants and confirms as to itself as of the date hereof (i) that the conveyance of the Assets by Seller pursuant hereto will not violate any provision of, or create a relationship which would be in violation of, applicable law; (ii) Seller has performed in full under each of the Operative Documents, is not in breach of any covenant, obligation, duty or condition to be performed or observed by it under any such agreements

and is not in default thereunder; (iii) Seller has not received any notice or claim by any other party to any such agreement or any dispute thereunder which is currently pending; (iv) to the best of Seller's knowledge no default or Event of Default or event which notice or passage of time or both has occurred which would give rise to a default or Event of Default (as defined in any Operative Documents) by any of the parties under the Operative Documents and no such person is in bankruptcy or breach of any covenant, obligation, duty or condition to be performed by it; and (v) the total amount of principal outstanding under the Conditional Sale Agreement (as that term is defined in the Purchased Agreement) is Six Million, One Hundred Twenty-six Thousand, Three Hundred Fifty-four Dollars and ninety-one cents (\$6,126,354.91).

SECTION 2. Assumption. (a) Buyer hereby accepts the foregoing assignment and assumes all of the duties and obligations of Seller under the Operative Documents arising or accruing on or after the date hereof. Buyer (i) confirms that it has the requisite corporate power and authority to enter into and carry out the transactions contemplated by the Operative Documents and (ii) agrees that it shall be bound by all the terms of, and shall undertake all the obligations of the Seller contained in, the Operative Documents, arising on or subsequent to the date hereof.

(b) Nothing herein, in the Purchase Agreement or elsewhere is, or is to be construed as, an assumption with recourse or guarantee by the Buyer of the indebtedness represented by the Conditional Sale Agreement.

SECTION 3. Reserved Rights. (a) Buyer and Seller recognize and agree that Seller will continue to be entitled to all benefits accrued to, and all rights vested in, the Seller pursuant to any and all Operative Documents in respect of the period prior to the Closing Date, including, without limitation, all rights to indemnification in respect of tax and other matters; provided that Seller shall continue to be liable for, and agrees to hold Buyer harmless on an after-tax basis from and against, any payment obligations of the Seller (or any person claiming by, through or under it) pursuant to the Operative Documents relating to the period prior to the Closing Date. Seller shall retain all accrued benefits and vested rights, all benefits and/or rights which are due and payable prior to the Closing Date, including without limitation Casualty Values (as defined in the Lease) and provided that Buyer shall be liable for, and agrees to hold Seller harmless on an after-tax basis from and against any Losses, liabilities or payment obligations of the Buyer (or any person claiming by, through or under it) pursuant to the Operative Documents, relating to events occurring on or after the Closing Date. Buyer agrees that, in all matters relating to any such rights, it shall act in a manner consistent with, and not in derogation of, any rights of Seller retained under any Operative Documents. Without limiting the generality of the foregoing, Seller and Buyer agree to take all action reasonably necessary to facilitate the realization by both of their respective rights under each Operative Document.

(b) If Buyer shall receive any amount under any Operative Document or otherwise relating to the transactions contemplated thereby to which Seller is entitled with respect to the period prior to the Closing Date ("Prior Claims"), it shall promptly remit such amount to

Seller (together with, to the extent not paid over within ten (10) business days, interest at the then applicable average rate for federal funds from the date of receipt by Buyer to the date of payment to Seller) and until so delivered any such amount received by Buyer shall be received and held in trust by Buyer for the benefit of Seller. If Seller shall receive any amount relating to any Operative Document or any of the transactions contemplated thereby (other than any amount received in respect of a Prior Claim) , Seller shall promptly remit such amount to Buyer (together with, to the extent not paid over within ten (10) business days, interest at the then applicable average rate for federal funds from the date of receipt by Seller to the date of payment to Buyer), and until so delivered any such amount received by Seller it shall be received and held in trust by Seller for the benefit of Buyer.

SECTION 4. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

SECTION 5. Governing Law. THIS AGREEMENT, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA APPLICABLE TO CONTRACTS MADE IN SUCH STATE AND TO BE PERFORMED ENTIRELY WITHIN SUCH STATE, WITHOUT GIVING EFFECT TO PRINCIPLES RELATING TO CONFLICTS OF LAW.

SECTION 6. Counterparts; Effective Date. This Agreement may be executed by the parties as hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument. This Agreement shall become effective as of the later of the dates set forth below under the signatures of the officers of the parties hereto on the execution page hereof.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the day and year set forth below under the signatures of their respective officers.

SELLER: CARGILL LEASING, CORPORATION

By: David L. Jacobson  
Name: David L. Jacobson  
Title: Vice President

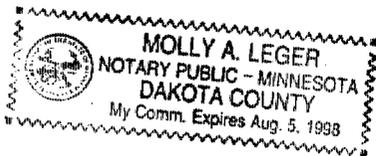
Dated: December 1, 1994

STATE OF MINNESOTA )  
 ) ss.  
COUNTY OF HENNEPIN )

On this 30<sup>th</sup> day of NOVEMBER, before me, MOLLY A. LEGER, Notary Public, personally appeared DAVID L. JACOBSON, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Molly A. Leger  
Notary Public



BUYER: USL CAPITAL CORPORATION

By: *[Signature]*  
Richard E. Kohn  
Manager, Business Development  
Rail Services

Dated: December 1, 1994

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

On this 29 day of November, before me, JACQUELINE Y. WITHERSPOON, Notary Public, personally appeared Richard E. Kohn, provided to me on the basis of satisfactory evidence to be person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

*Jacqueline Y. Witherspoon*  
Notary Public

