

OSTER
Researching Services

12897 Colonial Dr. • Mt. Airy, Md. 21771
301-253-6040

2-287A004

17975
RECORDED BY _____ FILED BY _____

October 13, 1992

OCT 9 1992-10 09 AM

INTERSTATE COMMERCE COMMISSION

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

Dear Ms. Lee:

Enclosed is a Lease Agreement dated February 17, 1992, between the following parties:

Lessor: Electro-Motive Division,
General Motors Corporation
LaGrange, IL 60525

Lessee: Burlington Northern Railroad
Fort Worth, Texas 76102

The equipment involved in this transaction is as follows:

Equipment: 4, SD60MAC 3800 HP Locomotives
#9500 - 9503

Please record this agreement as a primary document. The filing fee of \$16 is enclosed. Thank you for your assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

C. [unclear] Mary Ann Oster

OCT 13 9 53 AM '92
MOTOR OF RECORDING UNIT

OCT 9 1992 10 00 AM

INTERSTATE COMMERCE COMMISSION

LEASE OF FOUR (4) SD6OMAC LOCOMOTIVES

THIS LEASE, made and entered into as of this 17th day of February, 1992, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Lessor" and Burlington Northern Railroad Company, a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease: Lessee agrees to lease from Lessor four (4) model SD6OMAC 3,800 horsepower new locomotives, bearing the manufacturer serial numbers 896011-1, ^{9501,} 896011-2, ^{9502,} 906127-1 and ⁹⁵⁰³ 906127-2 (the "Locomotives"), constructed and equipped in accordance with Lessor's specification as contained in EMD Order Nos. 896011 and 906127. Copies of such specifications are attached hereto as Exhibits A and B respectively, and hereby made a part hereof (the "Specification"). Lessor shall place Lessee's reporting marks and such road numbers as Lessee shall designate on the Locomotives at the time of manufacture but only in the event Lessee has committed to purchase the Locomotives at some specific time prior to the date hereof.

Lessee will, during the term of this Lease, cause the Locomotives to be kept numbered and marked as they are at the time of delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotives, in letters not less than one inch in height, the words "General Motors Corporation, Electro-Motive Division, Owner" with appropriate changes thereto as from time to time may, in the opinion of Lessor, be required by law in order to protect Lessor's title to and interest in the Locomotives and the rights of Lessor under this Lease. Lessee will not place the Locomotives in operation or

exercise any control or dominion over the same unless such words are so marked on the Locomotives and will replace promptly any such markings which may be removed, obliterated, defaced or destroyed during the term of this Lease. Lessee will not change the identification number of any Locomotive unless and until a statement of the new number to be substituted therefor shall have been filed with Lessor and duly filed and deposited by Lessee in all public offices where this Lease shall have been filed and deposited.

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.

This Lease is not intended to constitute or create a joint venture, partnership, or agency of any kind between Lessor and Lessee.

2. Inspection, Acceptance and Warranties: The Locomotives will be delivered at no cost to Lessee at Pueblo, Colorado or at another mutually agreeable interchange point upon completion of all tests and/or modifications considered necessary by Lessor. Lessee shall have the right to inspect the locomotives from time to time during construction at Lessor's manufacturing plant for conformance with the Specification. Lessee will inspect locomotives for conformance with the Specification at the time of delivery. If each Locomotive appears to conform with the Specification and has no apparent defects, Lessee shall signify its acceptance by signing a Certificate of Acceptance in the form attached hereto as Exhibit C. Lessee's inspection and acceptance of any Locomotive shall not constitute a waiver of Lessee's warranty rights or operate in any other way to impair Lessee's rights under this Lease, and Lessee shall not be stopped from asserting that a Locomotive is defective or does not conform to the Specification if it becomes aware of such defects or non-conformance

after acceptance. Lessor warrants to Lessee that each Locomotive is of the kind and quality described in the Specification and is suitable for the ordinary purposes for which such equipment is used. Lessor further warrants, if Locomotives are maintained by the Lessee in accordance with EMD Maintenance Procedures, that each Locomotive shall be free from defects in material and workmanship which may develop under normal use and service within three (3) years from date of delivery or before the Locomotive has been operated 375,000 miles, whichever event shall first occur. Lessor agrees to correct such defects, which examination shall disclose to Lessor's satisfaction to be defective, by repair or replacement F.O.B. LaGrange, Illinois and such correction shall constitute fulfillment of Lessor's obligation with respect to such defect under this warranty.

Lessor warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to Lessor.

Lessor shall defend any suit or proceeding brought against Lessee so far as based on a claim that equipment of Lessor's Specification, or any part thereof, utilized in the Locomotives constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Lessor's expense) for the defense of same, and Lessor shall pay all damages and costs awarded therein against Lessee. In the event said equipment, or any part thereof, is in such suit held to constitute infringement and the use of said equipment or part is enjoined, Lessor shall at his option and at his own expense, either procure for Lessee the right to continue using said equipment or part, or replace same with non-infringing equipment, or modify it so it becomes non-infringing, or remove the Locomotives and terminate this Lease. Lessor shall not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by the Specification.

The foregoing states the entire liability of Lessor for patent infringement by the Locomotives or any part thereof.

There are no warranties, expressed or implied, made by Lessor except the warranties set out above and the covenants contained in the Maintenance Agreements referred to in Section 4 hereof.

3. **Rent:** This Lease and the rental, with respect to each Locomotive, shall commence when each said Locomotive is accepted by Lessee in accordance with the provisions of Section 2 and shall terminate five (5) years after the date the third Locomotive is so accepted. Except as otherwise provided in this Lease, Lessee shall pay Lessor semi-annually in arrears or any partial payment due the Lessor in the event of a Casualty Occurrence, Five Hundred Dollars (\$500) per day as rental for each Locomotive during such term. Lessor shall render an invoice for such rental at least thirty (30) days in advance of such rental coming due.
4. **Maintenance:** Upon the written request of Lessee prior to acceptance of the first Locomotive, except as otherwise provided in this Lease, Lessor shall repair, maintain and inspect the Locomotives, hereinafter collectively called "Maintain" or "Maintenance", in accordance with a Facility Agreement and Running Maintenance Agreement, both of which are dated December 20, 1989 (collectively, the "Maintenance Agreements"), wherein Lessor is performing the repair, maintenance and inspection of other locomotives for Lessee at Glendive, Montana, except that Lessee shall have no obligation to perform or bear the cost of a major overhaul of the Locomotives during the initial term of this Lease. Lessee shall pay Lessor for performance of Maintenance at the same rates per megawatt hour as provided for 100 locomotives in Section 4 of the aforesaid Running Maintenance Agreement. The Locomotives will be added to such 100 locomotives for the purpose of calculating

minimum and excess megawatt hours to determine maintenance payments to be paid by Lessee but for no other purpose. The minimum and excess megawatt hour rates for the Locomotives shall be subject to the adjustments provided for in paragraphs A, B and C of said Section 4. The performance of Maintenance during any extension of this Lease shall be subject to mutual agreement.

If Lessee shall exercise the option to have Lessor Maintain the Locomotives and a Locomotive remains at a repair facility of Lessor for a period in excess of 48 hours due to an unscheduled or periodic shopping, either awaiting or undergoing the repair of any of those parts or assemblies which affect the ability of a Locomotive to perform its train hauling function, rental shall be reduced by \$20.83 per hour for every hour in excess of such 48 hours and the 2400 semiannual MW-HR minimum per locomotive to be used in calculating Maintenance charges shall be reduced by fifty-six hundredths (.56) of a MW-HR for each such excess hour. The hours at the repair facility shall be computed to the nearest whole hour.

If Lessee does not exercise the option to have Lessor Maintain the Locomotives, Lessee will, at its own cost and expense, maintain each Locomotive in accordance with (a) prudent Class I Railroad industry maintenance practices, (b) maintenance practices used by Lessee in respect of equipment owned or leased by Lessee similar in nature to the Locomotives, (c) any and all applicable laws and regulations and (d) such new Maintenance Instructions associated with the experimental nature of the Locomotives as may be furnished by Lessor in a manner not inconsistent with the previous clause. Lessee shall not be obligated to perform a so called "major overhaul" of any Locomotive at Lessee's expense during the initial term of this Lease. Upon the expiration of this Lease, the Locomotives will be returned to Lessor in good working condition, AC Systems (as defined in Section 5) failures not attributable

to misuse or improper maintenance by Lessee, ordinary wear and tear and "major overhaul" excepted.

5. Locomotive Performance: The parties hereby agree that the Locomotives being leased hereunder will contain alternating current traction motors and certain other electrical and mechanical systems required to utilize these traction motors (hereinafter sometimes collectively called the "AC Systems"), all of which are of a new experimental design. Lessor shall have the right at any time during the term of this Lease to make a determination that the AC Systems are not practical or satisfactory. If Lessor shall make such a determination, Lessee shall have a period of not less than 120 days to return the Locomotives to Lessor and upon such return this Lease shall be deemed terminated as of such date.

If Lessee exercises the option to have Lessor Maintain the Locomotives, and such Locomotives shall have an Operational Availability, calculated in accordance with the Maintenance Agreements, of less than 93.46% for 12 consecutive months, Lessee shall have the right to return all of the Locomotives to Lessor and upon such return this Lease shall be deemed terminated. If Lessee does not exercise such Maintenance option and the Locomotives have an Operational Availability of less than 96.73% for 12 consecutive months commencing on the first day of the fifth full calendar month subsequent to Lessee's acceptance of the third Locomotive, Lessee shall have the right to return all of the Locomotives to Lessor and upon such return this Lease shall be deemed terminated. For purposes of the immediately preceding sentence, Operational Availability shall be calculated by (a) multiplying the number of days in such 12-month period by the daily average number of Locomotives subject to this Lease during such period and (b) dividing the product by the sum of the product plus the total number of days such Locomotives were at a shop of Lessee awaiting or undergoing repair of the AC Systems during such 12-month period.

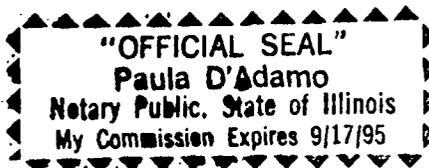
State of Illinois)
County of Cook) ss.

On this 27th day of August, 1992, before me personally appeared B.A. McCawless, to me personally known, who, being by me duly sworn, did say that he is an 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.

Paula D'Adamo

Notary Public

My commission expires:



State of Texas)
County of Tarrant) ss.

On this 8th day of June, 1992, before me personally appeared H. H. Francis, to me personally known, who, being by me duly sworn, did say that he is a Senior Vice President of Burlington Northern Railroad Company, 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.

Lynnda Yaws

Notary Public

My commission expires:

9/30/92

6. Lessor Use: Lessor shall have the right during the term hereof to use each of the Locomotives from time to time for testing and demonstration purposes. Such use shall not (a) exceed three instances per locomotive in each successive 12-month period, (b) exceed three months in the aggregate per locomotive in each successive 12-month period, or (c) occur during the months of September through December; unless and only to the extent that Lessee shall otherwise agree to such use. Lessor shall furnish Lessee not less than sixty (60) days advance written notice of the date and place Lessor desires the Locomotives to be delivered for such testing and demonstration and the date and place of return. Lessee shall move the Locomotives without the assessment of transportation charges to a reasonable location on the lines of Lessee and Lessor shall return the Locomotives without charge to Lessee to a reasonable location on the lines of Lessee. Lessee shall pay no rental or maintenance for the Locomotives during such periods of use by Lessor.

7. Loss or Destruction: If during the term of this Lease, a Locomotive shall become lost, stolen, destroyed, or damaged beyond economical repair, from any cause whatsoever, except during period of Lessor's use pursuant to Section 6 hereof or under circumstances that are the responsibility of Lessor pursuant to the Maintenance Agreements (any such occurrences being hereinafter called a "Casualty Occurrence") Lessee shall notify Lessor thereof. Lessee shall, on the last business day of the calendar month following such Casualty Occurrence, pay to Lessor the casualty value provided for on Exhibit D attached hereto and made a part hereof (hereinafter called the "Casualty Value") plus all outstanding rent due on the Locomotive(s) involved as of the date of such payment. Payments of Casualty Value delayed beyond such payment dates shall be subject to interest at a rate 1.5% above the prime rate of interest published in the Wall Street Journal on the date such payment was due and payable. Upon such payment, Lessee shall be entitled to any recoverable salvage and scrap from the damaged or destroyed Locomotive, unless Lessor desires the return

of said recoverable salvage or scrap, in which event the salvage or scrap shall be returned to Lessor at a reasonable point on lines of Lessee and the Casualty Value reduced by the value of such salvage and scrap as follows: salvage shall be computed for items not requiring repair at fifty percent (50%) of replacement cost, items requiring repair shall be computed at twenty-five percent (25%) of replacement cost and scrap shall be computed at the then current scrap value, except that in no event shall such payment exceed the Casualty Value. Replacement costs of salvageable items shall mean the normal cost to Lessee to obtain such items new. Lessee shall be relieved of any and all rental and maintenance payments for the Locomotive effective with the date of the Casualty Occurrence.

If a Locomotive is taken or requisitioned by condemnation or otherwise by the United States Government for a period of time which will exceed the remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by Lessee for a period of sixty (60) or more consecutive days, Lessor shall relieve Lessee from rental and maintenance payments and other Lease obligations not theretofore accrued for the Locomotive effective with the date the Locomotive was first requisitioned or condemned by said governmental agency and settle with such governmental agency for any proceeds to which Lessor is entitled and Lessee waives any claim to the proceeds resulting from such requisition. For any periods of such condemnation less than sixty (60) consecutive days, Lessee will continue to pay rental and collect and retain all proceeds from such governmental agency and if such proceeds must in the first instance be collected by Lessor, Lessor hereby agrees to make such collection and promptly remit to Lessee all amounts so collected.

8. Indemnity: Lessee does hereby release, indemnify and save harmless Lessor, its successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessor may incur, suffer or be in any way subjected to,

resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by growing out of or in any way connected with the lease, possession, use, maintenance or operation of the Locomotives by Lessee except those attributable to the fault, failure or negligence of Lessor or a responsibility of the Lessor under the Maintenance Agreement. The foregoing release and indemnification with respect to the Locomotives shall apply to matters or things occurring between the time a Locomotive is accepted by Lessee and the time it is returned to Lessor either upon termination of this Lease or pursuant to Section 6 hereof.

Lessor does hereby release, indemnify and save harmless Lessee, its successors and assigns, from and against any and all liability, loss, cost, damage, charges and expense which Lessee may incur, suffer or be in any way subjected to, resulting from or arising out of injury to or death of any person or persons whomsoever, and the loss or destruction of or damage to any property whatsoever of any persons, firm or corporation, including but not limited to the property of the parties hereto or in the care or custody of the parties hereto and from any and all claims, demands, or actions for such loss, injury or damage, caused by, growing out of or in any way connected with the, possession, use, maintenance or operation of said Locomotives by Lessor pursuant to Section 6 hereof or the Maintenance Agreement, except those attributable to the fault, failure or negligence of Lessee. The foregoing release and indemnification with respect to the Locomotives shall apply to matters or things occurring between the time a Locomotive is accepted by Lessor and the time it is returned to Lessee either pursuant to Section 6 or the terms of the Maintenance Agreements.

9. **Reports:** Lessee agrees to prepare and deliver to Lessor 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 federal, state or other regulatory authority by reason of Lessor's ownership of the Locomotives, or the leasing thereof to Lessee, provided that Lessor has provided Lessee with all of the information required by Lessee, if any, resulting from Lessor's use of the Locomotives pursuant to Section 6 hereof.
10. **Purchase Option Prior to Acceptance:** At any time prior to the acceptance of any of the Locomotives by Lessee under this Lease, Lessee, or a party designated by Lessee, shall have the right to purchase such Locomotive at the same purchase price as each of the 50 SD60 locomotives that are to be delivered to Lessee during the first quarter of 1991. If Lessee, or a party designated by Lessee, shall exercise this option, Sections 4, 6, 7, 8, 9, 13, 17, 18, 19, 20, 21 and 22 of this Lease shall survive and become applicable to Electro-Motive Division, General Motors Corporation as Lessee and Burlington Northern Railroad Company or a party designated by Burlington Northern Railroad Company as Lessor of the purchased Locomotive for the temporary use provided for in Section 6, provided, however, that Electro-Motive Division, General Motors Corporation shall pay rental at the rate of \$500 per day, payable monthly in arrears, during the time it is leasing the Locomotive.
11. **Purchase Option After Acceptance:**
Unless an Event of Default, as that term is defined in Section 22 hereof, shall have occurred and be continuing at the time of the giving by Lessee of not less than one hundred eighty (180) days advance written notice prior to expiration of the initial Lease term, Lessee may request a price for the outright sale of any of the Locomotives. Within thirty (30) days of the receipt of such notice, Lessor shall stipulate the price payable and within thirty (30) days of its receipt of such notice of

purchase, Lessee shall exercise its right to purchase or forego any rights in that regard.

Should Lessor elect to sell the Locomotives at any time during the twelve (12) month period following termination of this Lease, Lessee will be afforded a right to purchase the Locomotives on Terms equivalent to the most advantageous bona fide purchase offer received by Lessor.

12. Lease Extension Option: Unless an Event of Default, as that term is defined in Section 22 hereof, shall have occurred and be continuing, Lessor shall provide Lessee with a Specification for the Overhaul of the Locomotives not less than 180 days prior to the expiration of the initial term of this Lease. Lessee shall have the option to renew this Lease with respect to all of the Locomotives then subject hereto at the rent stated herein for an additional five (5) year period by giving Lessor written notice within thirty (30) days of Lessee's receipt of such Specification.

In the event of any such renewal, Lessee shall perform an overhaul to EMD specifications of each of the Locomotives at Lessee's sole expense at a mutually agreed upon time during the renewal lease term. In the event Lessee chooses not to renew, Lessee shall nevertheless have the right during the twelve (12) month period following termination hereof to execute a new Lease on terms no less favorable than the most advantageous Lease offer received by Lessor.

13. Assignment: Lessee shall not assign or sublet its interest, or any parts thereof, under this Lease, or permit the use or operation of the Locomotives subject to this Lease by any other person, firm or corporation, other than wholly-owned subsidiaries, without the prior written consent of Lessor. Lessor expressly consents to incidental operation and use on railroads other than Lessee's under run-through arrangements

limited to the United States or Canada. Lessor may at any time assign its right and obligations under this Lease without notice to or prior consent of Lessee and in such event Lessor's transferee as assignee shall have to the extent provided in the assignment the rights, powers, privileges and remedies of Lessor hereunder; provided, however, Lessor shall not assign its obligation to Maintain the Locomotives without Lessee's prior written consent and that no assignment of this Lease shall relieve Lessor of its obligations hereunder.

14. Notices: 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:

Notices from Lessor to Lessee shall be sent to:

System Chief Mechanical Officer
Burlington Northern Railroad Company
2800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

Notices from Lessee to Lessor shall be sent to:

Electro-Motive Division
General Motors Corporation
9301 W. 55th Street
LaGrange, Illinois 60525
Attn: Manager of New Venture Operations

or to such other party and address and Lessee and/or Lessor may from time to time direct by written notice to the other party.

15. Quiet Enjoyment: So long as Lessee makes the rental payments required hereunder and otherwise complies with the terms and provisions hereof, Lessee shall be entitled

to the use and possession of the Locomotives according to the term hereof without interference by Lessor or by any party lawfully claiming by or through Lessor.

16. **Authority:** The undersigned signatories herewith represent and warrant that they are fully authorized to execute this Lease and bind the respective parties to the terms and provisions hereof.
17. **Late Charges:** Delinquent installments of rent shall bear interest at the rate of one and one-half percent (1-1/2%) per month if not prohibited by law, otherwise at the highest lawful contract rate.
18. **Protection of Lessor's Title:** Lessor may, at its option, cause this Lease to be duly filed, registered or recorded in conformity with Section 11303 of the Interstate Commerce Act or other places within or without the United States as Lessor may reasonably request for the protection of its title. Lessee will, from time to time, do and perform any act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by Lessor, for the purpose or protecting Lessor's title to the Locomotives or for the purpose of carrying out the intention of this Lease.
19. **Taxes:** Lessee, or Lessor at Lessee's expense, shall report, pay and discharge when due all license and registration fees, assessments, sales, but only as it relates to use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Locomotives, excluding any tax measured by Lessor's net income, together with any penalties or interest thereon imposed by any state, federal or local government upon the Locomotives, whether or not the same shall be assessed against or in the name of Lessor or Lessee, provided, however, that Lessee shall not pay and discharge such license and registration fees, assessments, sales, gross receipts, penalties or

interest incurred due to Lessor's use and possession of the Locomotives pursuant to Section 6 hereof.

20. Performance of Obligations of Lessee by Lessor: In the event that Lessee shall fail duly and promptly to perform any of its obligations under the provision of this Lease, Lessor may, at its option, perform the same for the account of Lessee without thereby waiving such default, and any account paid or expense (including reasonable attorneys' fees), penalty or other liability incurred by Lessor in such performance, together with interest at the rate of one percent (1%) per month shall be payable by Lessee upon demand as additional rent hereunder.
21. Lessee's Covenants: Lessee will: (a) defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives in any way related to Lessee's use or operation of the Locomotives; (b) not misuse, secrete, or without the prior written consent of Lessor and notwithstanding Lessor's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives; (c) agree that Lessor may enter upon Lessee's premises at any reasonable time and upon reasonable notice to inspect the Locomotives; and (d) except as provided in Section 12 hereof, not permit the use of the Locomotives by any other party without Lessor's prior written consent.
22. Default: An event of default shall occur if: (a) Lessee fails to pay when due any installment of rent and such failure continues for a period of ten (10) days; (b) Lessee shall fail to perform or observe any covenant, condition or agreement to be performed or observed by it hereunder and such failure continues uncured for thirty (30) days after written notice thereof to Lessee by Lessor, provided however, that the continuation of such a default for longer than such 30 days after such written notice shall not constitute an event of default if (i) such default is capable of being cured

but cannot be cured within thirty (30) days, (ii) Lessee is diligently pursuing the cure of such default and (iii) such default does not impair in any material respect Lessor's interest in the Locomotives; (c) Lessee ceases doing business as a going concern, makes an assignment for the benefit of creditors, admits in writing its inability to pay its debts as they become due, files a voluntary petition in bankruptcy, is adjudicated a bankrupt or an insolvent, files a petition seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar arrangement under any present or future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceedings, consents to or acquiesces in the appointment of a trustee, receiver, or liquidator of it or of all or any substantial part of its assets or properties, or if it or its shareholders shall take any action looking to its dissolution or liquidation; (d) within sixty (60) days after the commencement of any proceedings against Lessee seeking reorganization, arrangement, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceedings shall not have been dismissed, or if within sixty (60) days after the appointment without Lessee's consent or acquiescence of any trustee, receiver or liquidator of it or of all or any substantial part of its assets and properties, such appointment shall not be vacated; or (e) Lessee attempts to remove, sell, transfer, encumber, part with possession or sublet the Locomotives or any item thereof in a manner prohibited hereunder.

Upon the occurrence of an event of default, Lessor at its option may: (a) declare all sums due hereunder immediately due and payable; (b) proceed by appropriate Court action or action or other proceedings either at law or equity to enforce performance by Lessee of any and all covenants of this Lease and to recover damages for the breach thereof; (c) demand that Lessee deliver the Locomotives forthwith to Lessor at Lessee's expense at such place as Lessor may designate; and (d) without notice or

liability or legal process, enter or direct its agents to enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where any Locomotive may be or by Lessor is believed to be, and retake such Locomotive, disconnecting and separating it from any other property and using all action necessary or permitted by applicable law so to do, Lessee hereby expressly waiving all further rights to possession of the Locomotives and all claims for damages suffered through or loss caused by such retaking. If any statute governing any proceeding hereunder specifies the amount of Lessor's deficiency or other damages for breach of this Lease by Lessee, Lessor shall be entitled to provide as and for damages for the breach an amount equal to that allowed under such statute. The provisions of this paragraph shall be without prejudice to any rights given to Lessor by such statute to prove for any and all amounts owed thereby. Should any proceedings be instituted by or against Lessor for monies due to Lessor hereunder and/or for possession of the Locomotive or for any other relief, Lessee shall pay a reasonable sum as attorney's fees.

The remedies in this Lease provided in favor of Lessor 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 and Lessee agree that Lessor shall be entitled to all rights (such rights being fundamental to the willingness of Lessor to enter into this Lease) provided in the Bankruptcy Code or of any other bankruptcy act, so that Lessor shall have the right to take possession of the Locomotives upon any event of default under this Lease regardless of whether Lessee is in reorganization.

No failure by Lessor or Lessee to exercise, and no delay by Lessor or Lessee 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 or

Lessee preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

24. Miscellaneous: 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.

IN WITNESS WHEREOF, the parties hereto have executed or caused this Lease to be executed as of the date first hereinabove written.

BURLINGTON NORTHERN RAILROAD COMPANY

By: *d. d. Francis*

Title: SENIOR VICE PRESIDENT
NETWORK MANAGEMENT

ELECTRO-MOTIVE DIVISION
GENERAL MOTORS CORPORATION

By: *R. E. ...*

Title: ASSISTANT SECRETARY

Manager of Financing and Treasury