



BURLINGTON NORTHERN RAILROAD

LAW DEPARTMENT

3800 Continental Plaza
777 Main Street
Ft. Worth, Texas 76102

(817) 878-2385
Docket No. BN 6053

RECORDATION NO. 8138-B FILED 1-83

FEDERAL EXPRESS

March 13, 1990

MAR 14 1990 - 11 10 AM

0-073A024

INTERSTATE COMMERCE COMMISSION

Ms. Mildred R. Lee, Recordations
Interstate Commerce Commission
Room 2303
Twelfth and Constitution Ave., N.W.
Washington, D.C. 20423

Re: Document for Recordation: Equipment Lease Dated February 1, 1983, Between United States Trust Company of New York and Burlington Northern Railroad Company

Dear Ms. Lee:

I am enclosing two verified copies of the document described below to be recorded pursuant to Section 11303, Title 49 of the United States Code.

This document is a Lease of Railroad Equipment, a secondary document, dated February 1, 1983. The primary document to which this lease relates is a Lease of Railroad Equipment, dated November 1, 1975, between United States Trust Company of New York, as Trustee; American Rail Box Car Company, as Lessee; and Burlington Northern Inc. (now Burlington Northern Railroad Company), as Guarantor. The primary document was recorded under ICC Recordation No. 8138, on December 3, 1975.

The names and addresses of the parties to the transaction are:

Owner- United States Trust Company of New York
Trustee: Corporate Trust & Agency Division 21W
45 Wall Street
New York, New York 10005

Lessee: Burlington Northern Railroad Company
3800 Continental Plaza
777 Main Street
Fort Worth, Texas 76102

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Ms. Mildred R. Lee
March 13, 1990
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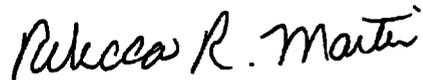
A general description of the equipment covered by the enclosed Lease of Railroad Equipment is shown on Schedule A of said document.

A fee of \$15.00 is enclosed for recording the Lease of Railroad Equipment. Please return to the undersigned any extra copies not needed by the Commission for recordation.

A short summary of the document to appear in the index follows:

Lease of Railroad Equipment (modification to ICC Recordation No. 8138, recorded on December 3, 1975), dated February 1, 1983, between United States Trust Company of New York (Owner-Trustee) and Burlington Northern Railroad Company (Lessee), leasing the equipment described on Schedule A of said document.

Very truly yours,



Rebecca R. Martin
Legal Assistant

RRM/sd
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

3/16/90

OFFICE OF THE SECRETARY

Rebecca R. Martin
Legal Assistant
Burlington Northern Railroad
3800 Continental Plaza
777 Main Street
Ft. Worth Texas 76102

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 3/14/90 at 11:10^{am} and assigned recordation number(s). 8138-B 8212-B

Sincerely yours,



Noreta R. McGee
Secretary

Enclosure(s)

VERIFICATION

RECORDED BY 8138-B

MAR 14 1990 - 11 10 AM
INTERSTATE COMMERCE COMMISSION

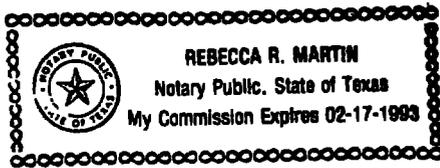
STATE OF TEXAS)
)
COUNTY OF TARRANT) ss.

Francis T. Kelly, Securities and Finance Counsel, Burlington Northern Railroad Company, being duly sworn, deposes and states that he has compared the attached copy with the original document and has found the copy to be complete and identical in all respects to the original document.

Francis T. Kelly
Francis T. Kelly

Subscribed and sworn to before me
this 13th day of March, 1990.

Rebecca R. Martin
Notary Public in and for
the State of Texas



40 LEASE OF RAILROAD EQUIPMENT dated as of February
41 1, 1983 between Burlington Northern Railroad Company, a
42 Delaware corporation (hereinafter called the Lessee), and
43 UNITED STATES TRUST COMPANY OF NEW YORK, a New York corpora-
44 tion, as Trustee (hereinafter, together with its successors
45 and assigns, called the Owner-Trustee) under a Trust Agree-
46 ment dated as of November 1, 1975 (hereinafter called the
47 Trust Agreement), with GENERAL ELECTRIC CREDIT CORPORATION
48 (hereinafter called the Owner).

49
50 WHEREAS, the Owner-Trustee and the Lessee, as
51 Guarantor, entered into conditional sale agreements dated as
52 of November 1, 1975 (hereinafter individually and collec-
53 tively called the Security Document) with ACF Industries,
54 Incorporated, FMC Corporation, Pullman Incorporated
55 (Pullman-Standard division) and PACCAR Inc., respectively,
56 (hereinafter individually called a Builder and collectively
57 the Builders) pursuant to which the Builders manufactured,
58 sold and delivered to the Owner-Trustee the units of rail-
59 road equipment described in Annex B thereto (hereinafter
60 called the Equipment); and

61
62 WHEREAS, each Builder assigned certain of its in-
63 terests in its Security Document to Mercantile-Safe Deposit
64 and Trust Company, as agent (hereinafter, together with its
65 successors and assigns, called the Vendor), pursuant to, in
66 each case, an Agreement and Assignment (hereinafter individ-
67 ually called an Assignment and collectively the Assign-
68 ments); and

69
70 WHEREAS, the Owner-Trustee has leased the Equip-
71 ment delivered and accepted and settled for under the Secu-
72 rity Document to American Rail Box Car Company, now known as
73 Railbox Company (hereinafter called Railbox), under a Lease
74 of Railroad Equipment dated as of November 1, 1975 (herein-
75 after called the Original Lease); and

76
77 WHEREAS, the Lessee agreed to guarantee the obli-
78 gations of Railbox under the Original Lease pursuant to a
79 Guaranty Agreement dated as of November 1, 1975 (hereinafter
80 called the Guaranty); and

81
82 WHEREAS, the Owner-Trustee assigned the Original
83 Lease for security to the Vendor pursuant to an Assignment
84 of Lease and Agreement (hereinafter called the Original
85 Lease Assignment) and Railbox consented to the Original
86 Lease Assignment pursuant to a Lessee's Consent and Agree-
87 ment (hereinafter called the Original Consent); and

88
89

89 WHEREAS, Railbox has notified the Owner-Trustee
90 that it cannot meet its February 1, 1983, rental payment
91 under the Original Lease and Lessee has made such payment
92 and has requested Railbox to convey, transfer and assign to
93 Lessee all Railbox's right, title and interest in and to the
94 Original Lease and the 989 boxcars described in Schedule A
95 hereto (the "Units") and Lessee has requested the
96 Owner-Trustee to enter into this Lease, all pursuant to the
97 terms and conditions referred to in §16 of the Original
98 Lease; and

99
100 WHEREAS, Railbox has conveyed, transferred and
101 assigned to Lessee all of Railbox's right, title and inter-
102 est in and to the Original Lease and the Units pursuant to
103 an Assignment of Lease dated as of February 1, 1983 (herein-
104 after called the Assignment of Lease); and

105
106 WHEREAS, the Owner-Trustee will assign this Lease
107 for security to the Vendor pursuant to an Assignment of
108 Lease and Agreement (hereinafter called the Lease Assign-
109 ment) and the Lessee will consent to the Lease Assignment
110 pursuant to a Lessee's Consent and Agreement (hereinafter
111 called the Consent);

112
113 NOW, THEREFORE, in consideration of the rentals to
114 be paid and the covenants hereinafter mentioned to be kept
115 and performed by the Lessee, the Owner-Trustee hereby leases
116 the Units to the Lessee, upon the following terms and
117 conditions:

118
119 §1. Net Lease. This lease is a net lease. Les-
120 see's obligation to pay all rentals and other amounts
121 hereunder shall be absolute and unconditional and, except as
122 herein provided, the Lessee shall not be entitled to any
123 abatement of rent, reduction thereof or setoff against rent,
124 including, but not limited to, abatements, reductions or
125 setoffs due or alleged to be due by reason of any past,
126 present or future claims of the Lessee against Railbox, the
127 Owner or the Owner-Trustee under the Original Lease or
128 against the Owner-Trustee or the Owner under this Lease or
129 under the Security Documents, including the Lessee's rights
130 by subrogation thereunder to the respective Builder or the
131 Vendor or otherwise; nor, except as otherwise expressly pro-
132 vided herein, shall this Lease terminate, or the respective
133 obligations of the Owner-Trustee or the Lessee be otherwise
134 affected, by reason of any defect in or damage to or loss of

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135 possession or loss of use or destruction of all or any of
136 the Units from whatsoever cause, including, but not limited
137 to, any insolvency of or the bankruptcy, reorganization or
138 other similar proceeding against Railbox, or any liens,
139 encumbrances or rights of others with respect to any of the
140 Units; the prohibition of or other restriction against the
141 Lessee's use of all or any of the Units, the interference
142 with such use by any person or entity, the invalidity or
143 unenforceability or lack of due authorization of this Lease,
144 any insolvency of or the bankruptcy, reorganization or
145 similar proceeding against the Lessee or Railbox, or for any
146 other cause whether similar or dissimilar to the foregoing,
147 any present or future law to the contrary notwithstanding,
148 it being the intention of the parties hereto that the rents
149 and other amounts payable by the Lessee hereunder shall con-
150 tinue to be payable in all events in the manner and at the
151 times herein provided unless the obligation to pay the same
152 shall be terminated pursuant to the express provisions of
153 this Lease. To the extent permitted by applicable law, the
154 Lessee hereby waives any and all rights which it may now
155 have or which at any time hereafter may be conferred upon
156 it, by statute or otherwise, to terminate, cancel, quit or
157 surrender the lease of any of the Units except in accordance
158 with the express terms hereof. Each rental or other payment
159 made by the Lessee hereunder shall be final and the Lessee
160 shall not seek to recover all or any part of such payment
161 from the Owner-Trustee, the Owner or the Vendor for any
162 reason whatsoever.

164

165 §2. Delivery and Acceptance of Units. The Lessee
166 agrees that the execution and delivery of this Lease by the
167 Owner-Trustee shall constitute delivery of the Units subject
168 to this Lease and the execution and delivery of this Lease
169 by the Lessee shall constitute acceptance of such Units
170 under this Lease; provided, however, that such constructive
171 delivery and acceptance shall in no way interfere with or
172 prejudice the right of the Lessee to the performance of
173 Railbox's obligation to deliver said Units pursuant to the
174 Assignment of Lease.

175

176 §3. Rentals. The Lessee agrees to pay to the
177 Owner-Trustee, as rental for each Unit subject to this
178 Lease, 15 consecutive semiannual payments, payable on
179 February 1, and August 1, of each year commencing
180 February 1, 1984. Each of the 15 semiannual rental payments
181 shall be in an amount equal to 4.83514% of the Purchase

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182 Price (as defined in the Security Document) of each Unit
183 subject to this Lease on the date of such payment.

184
185 If any of the semiannual rental payment dates
186 referred to above is not a business day (as such term is
187 defined in the Security Document) the semiannual rental pay-
188 ment otherwise payable on such date shall then be payable on
189 the next succeeding business day, and no interest shall be
190 payable for the period from and after the nominal date for
191 payment thereof to such next succeeding business day.

192
193 The Owner-Trustee irrevocably instructs the Lessee
194 to make all the payments provided for in this Lease to the
195 Vendor, for the account of the Owner-Trustee, in care of the
196 Vendor, with instructions to the Vendor (a) first to apply
197 such payments to satisfy the obligations of the
198 Owner-Trustee under the Security Document known to the Ven-
199 dor to be due and payable on the date such payments are due
200 and payable hereunder and (b) second, so long as no event of
201 default under the Security Document shall have occurred and
202 be continuing, to pay any balance promptly to the
203 Owner-Trustee or to the order of the Owner-Trustee in imme-
204 diately available funds at such place as the Owner-Trustee
205 shall specify in writing.

206
207 The Lessee agrees to make each payment provided
208 for herein as contemplated by this §3 in immediately avail-
209 able funds at or prior to 11:00 a.m. in the city where such
210 payment is to be made.

211
212 §4. Term of Lease. The term of this Lease as to
213 each Unit shall commence as of the date hereof and, subject
214 to the provisions of §§7, 10 and 13 hereof, shall terminate
215 on the date on which the final payment of rent in respect
216 thereof is due pursuant to §3 hereof. The obligations of
217 the Lessee hereunder (including, but not limited to, the ob-
218 ligations under §§5, 7, 9 and 14 hereof) shall survive the
219 expiration of the term of this Lease.

220
221 Notwithstanding anything to the contrary contained
222 herein, all rights and obligations of the Lessee under this
223 Lease and in and to the Units are subject to the rights of
224 the Vendor under the Security Document. If an event of
225 default should occur under the Security Document, the Vendor
226 may terminate this Lease (or rescind its termination), all
227 as provided therein.

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229 §5. Identification Marks. The Lessee will cause
230 each Unit to be numbered with its identifying number as set
231 forth in Schedule A hereto, or in the case of any Unit not
232 there listed such identifying number as shall be set forth
233 in any amendment or supplement hereto extending this Lease
234 to cover such Unit, and will keep and maintain, plainly,
235 distinctly, permanently and conspicuously marked on each
236 side of each Unit, in letters not less than one inch in
237 height, the words, "Ownership Subject to a Security Agree-
238 ment Filed Under the Interstate Commerce Act, Section 20c",
239 "Owned by a Bank or Trust Company under a Security Agreement
240 Filed Under the Interstate Commerce Act, Section 20c" or
241 other appropriate words designated by the Owner-Trustee,
242 with appropriate changes thereof and additions thereto as
243 from time to time may be required by law in order to protect
244 the Owner-Trustee's and the Vendor's title to and property
245 in such Unit and the rights of the Owner-Trustee under this
246 Lease and of the Vendor under the Security Document. The
247 Lessee will not place any such Unit in operation or exercise
248 any control or dominion over the same until such name and
249 words shall have been so marked on both sides thereof and
250 will replace promptly any such name and words which may be
251 removed, defaced or destroyed. The Lessee will not change
252 the identifying number of any Unit unless and until (i) a
253 statement of new number or numbers to be substituted there-
254 for shall have been filed with the Vendor and the
255 Owner-Trustee and filed, recorded and deposited by the Les-
256 see in all public offices where this Lease and the Security
257 Document shall have been filed, recorded and deposited and
258 (ii) the Lessee shall have furnished the Vendor and the
259 Owner-Trustee an opinion of counsel to the effect that such
260 statement has been so filed, recorded and deposited, such
261 filing, recordation and deposit will protect the Vendor's
262 and the Owner-Trustee's interests in such Units and no fil-
263 ing, recording, deposit or giving of notice with or to any
264 other federal, state or local government or agency thereof
265 is necessary to protect the interests of the Vendor and the
266 Owner-Trustee in such Units.

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268 The Units may be lettered with the names or ini-
269 tials or other insignia customarily used by the Lessee or
270 its affiliates. Except as above provided, the Lessee will
271 not allow the name of any person, association or corporation
272 to be placed on any Unit as a designation that might be
273 interpreted as a claim of ownership.

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275 §6. Taxes. Whether or not any of the transac-
276 tions contemplated hereby are consummated, the Lessee agrees
277 to pay, and to indemnify and hold the Owner-Trustee, the
278 Owner, and the Vendor harmless from, all taxes, assessments,
279 fees and charges of any nature whatsoever, together with any
280 penalties, fines, additions to tax or interest thereon,
281 howsoever imposed, whether levied or imposed upon the
282 Owner-Trustee, the Owner, the Vendor, the Lessee, the trust
283 estate created by the Trust Agreement or otherwise, by any
284 federal, state or local government or governmental subdivi-
285 sion in the United States or by any foreign country or sub-
286 division thereof, upon or with respect to: any Unit or any
287 part thereof; the purchase, ownership, delivery, leasing,
288 possession, use, operation, transfer of title, return or
289 other disposition thereof; the indebtedness with respect
290 thereto; the rentals, receipts or earnings arising
291 therefrom; the Original Lease or this Lease, the Trust
292 Agreement, the Participation Agreement dated as of November
293 1, 1975, among Railbox, the Lessee, as Guarantor, the
294 Owner-Trustee and the Owner (hereinafter called the Partici-
295 pation Agreement), the Security Documents, the Assignments,
296 the Assignment of Lease, the Lease Assignment, any payment
297 made pursuant to any such agreement, or the property, the
298 income or other proceeds received with respect to property
299 held in trust by the Owner-Trustee under the Trust Agreement
300 (all such taxes, assessments, fees, charges, penalties,
301 fines, additions to tax and interest imposed as aforesaid
302 being hereinafter called "taxes"); excluding, however: (i)
303 Taxes of the United States or of any state or political sub-
304 division thereof and (if and to the extent that any person
305 indemnified hereunder is entitled to a credit therefor
306 against its United States Federal income taxes or is inden-
307 nified by the Lessee pursuant to Paragraph 7 of the Partici-
308 pation Agreement) of any foreign country or subdivision
309 thereof, imposed on or measured solely by the net income or
310 excess profits of the Owner-Trustee (in its individual ca-
311 pacity), the Owner or the Vendor, other than Taxes arising
312 out of or imposed in respect of the receipt of indemnifica-
313 tion payments pursuant to this Lease, provided that such
314 Taxes of any foreign country or subdivision thereof incurred
315 as a result of the indemnified party being taxed by such
316 foreign country or jurisdiction on its worldwide income
317 without regard to the transactions contemplated by this
318 lease shall be excluded whether or not the indemnified party
319 is entitled to a credit against its United States Federal
320 income taxes; (ii) any Taxes imposed as a direct result of a

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321 voluntary transfer or other voluntary disposition by the
322 Owner or any transfer or disposition by the Owner resulting
323 from bankruptcy or other proceedings for the relief of
324 creditors in whether the Owner is the debtor, which volun-
325 tary or involuntary, of any interest in any Unit or interest
326 in rentals under this lease; (iii) any Taxes imposed on or
327 measured by any fees or compensation received by the
328 Owner-Trustee or the Vendor; and (iv) Taxes which are im-
329 posed on or measured solely by the net income of the
330 Owner-Trustee or the Vendor if and to the extent that such
331 Taxes are in substitution for or reduce the Taxes payable by
332 any other person which the Lessee has not agreed to pay or
333 indemnify against pursuant to this §6; provided, however,
334 that the Lessee shall not be required to pay any Taxes dur-
335 ing the period it may be contesting the game in the manner
336 provided in the next succeeding paragraph. The Lessee
337 further agrees to pay on or before the time or times pre-
338 scribed by law any tax imposed on or measured solely by the
339 net income of the Lessee (or the affiliated group, within
340 the meaning of section 1504 of the Internal Revenue Code of
341 1954, as amended, of which the Lessee is a member) under the
342 laws of the United States or of any state or political sub-
343 division thereof, or of any foreign country or subdivision
344 thereof which, if unpaid, might result in a lien or other
345 encumbrance upon any Unit; provided, however, that the Les-
346 see shall not be required to pay any such tax during the
347 period it may be contesting the game.

349

350 If claim is made against the Owner-Trustee, the
351 Owner or the Vendor for any Taxes indemnified against under
352 this §6, such party shall promptly notify the Lessee. If
353 reasonably requested by the Lessee in writing, the
354 Owner-Trustee or the Vendor, as the case may be, shall, upon
355 receipt of any indemnity satisfactory to it and to the Owner
356 for all costs, expenses, losses, legal and accountants' fees
357 and disbursements, penalties, fines, additions to tax and
358 interest, and at the expense of the Lessee, contest in good
359 faith the validity, applicability or amount of such Taxes by
360 (a) resisting payment thereof if possible, (b) not paying
361 the same except under protest, if protest is necessary and
362 proper, and (c) if payment is made, using reasonable efforts
363 to obtain a refund thereof in appropriate administrative or
364 judicial proceedings, or both. The Lessee may also contest,
365 at its own expense, the validity, applicability or amount of
366 such Taxes in the name of the Owner-Trustee, the Owner or
367 the Vendor; provided that, no proceeding or actions relating

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368 to such contest shall be commenced (nor shall any pleading,
369 motion, brief or other paper be submitted or filed in the
370 name of the Owner-Trustee, the Owner or the Vendor in any
371 such proceeding or action) without the prior written consent
372 of the Owner-Trustee, the Owner or the Vendor, as the case
373 may be. If the Owner-Trustee, the Owner or the Vendor shall
374 obtain a refund of all or any part of such Taxes previously
375 reimbursed by the Lessee in connection with any such contest
376 or an amount representing interest thereon, the
377 Owner-Trustee or the Vendor, as the case may be, or the
378 Owner shall pay the Lessee the amount of such refund or in-
379 terest net of expenses; provided, however, that no Event of
380 Default and no event which with notice or lapse of time or
381 both would constitute an Event of Default shall have
382 occurred and be continuing.

383

384 In case any report or return is required to be
385 made with respect to any obligation of the Lessee under this
386 §6 or arising out of this §6, except obligations resulting
387 from the second sentence of the first paragraph of this §6,
388 the Lessee shall either make such report or return in such
389 manner as will show the interests of the Owner-Trustee in
390 the Units, or shall promptly notify the Owner-Trustee, the
391 Owner and the Vendor of such requirement and shall make such
392 report or return in such manner as shall be satisfactory to
393 the Owner-Trustee and the Vendor. All costs and expenses
394 (including legal and accountants' fees) of preparing any
395 such return or report shall be borne by the Lessee.

396

397 All the obligations of the Lessee under this §6
398 shall survive and continue, but only with respect to periods
399 included in the term of this lease, notwithstanding payment
400 in full of all amounts due under the Security Document or
401 the termination of this Lease. Payments due from the Lessee
402 to the Owner-Trustee, the Owner or the Vendor under this §6
403 shall be made directly to the party indemnified.

404

405 §7. Payment for Casualty Occurrences; Insurance.
406 In the event that any Unit shall be or become worn out,
407 lost, stolen, destroyed, irreparably damaged, or permanently
408 rendered unfit for use from any cause whatsoever, or taken
409 or requisitioned by condemnation or otherwise resulting in
410 loss of possession by the Lessee for a period of 90 consecu-
411 tive days, except requisition for use by the United States
412 Government (such occurrences being hereinafter called Casu-
413 alty Occurrences) during the term of this Lease, or until

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414 such Unit shall have been returned in the manner provided in
415 §11 or §14 hereof, the Lessee shall promptly and fully noti-
416 fy the Owner-Trustee and the Vendor with respect thereto.

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420 If such notice from the Lessee shall have been
421 received at least 15 days prior to the February 1 or August
422 1 next succeeding the event with respect to which such
423 notice is given, then on such next February 1 or August 1
424 following such event the Lessee shall pay to the
425 Owner-Trustee an amount equal to the rental payment or pay-
426 ments in respect of such Unit due and payable on such date
427 plus a sum equal to the Casualty Value (as hereinafter
428 defined) of such Unit as of the date of such payment in ac-
429 cordance with Schedule B hereto. If such notice from the
430 Lessee shall have been received within 15 days of the
431 February 1 or August 1 next succeeding the event with
432 respect to which such notice is given or subsequent to such
433 date, then on such next February 1 or August 1 the Lessee
434 shall pay to the Owner-Trustee an amount equal to the rental
435 payment or payments in respect of such Unit due and payable
436 on such date and shall further pay to the Owner-Trustee on
437 the February 1 or August 1 next succeeding the date for such
438 rental payment a sum equal to the Casualty Value of such
439 Unit as of the February 1 or August 1 next succeeding the
440 event with respect to which such notice is given plus an
441 amount equal to interest at the rate of 10 1/4% per annum
442 (calculated on the basis of a 360-day year of 12 30-day
443 months) on such Casualty Value from such next succeeding
444 date until the payment of such Casualty Value. All refer-
445 ences herein to February 1 or August 1 shall be deemed to
446 refer to whichever such date shall occur soonest. Upon the
447 making of such payment by the Lessee in respect of any Unit,
448 the rental for such Unit shall cease to accrue, the term of
449 this lease as to such Unit shall terminate and (except in
450 the case of the loss, theft or complete destruction of such
451 Unit) the Owner-Trustee shall be entitled to recover
452 possession of such Unit.

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453

454 If the date upon which the making of such payment
455 by the Lessee in respect of any Unit is required as afore-
456 said shall be after the term of this Lease in respect of
457 such Unit has expired, no rental for such Unit shall accrue
458 after the end of such term but the Lessee, in addition to
459 paying the Casualty Value for such Unit (which shall be the
460 same percentage of the Purchase Price as is indicated in
461 Schedule B hereto opposite the last rental payment date),

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461 shall pay interest thereon from the end of such term to the
462 date of such payment at the prime rate of interest which
463 Manufacturers Hanover Trust Company, New York, New York,
464 charges on the date of such payment for 90-day unsecured
465 loans to large corporate borrowers of the highest credit
466 standing.

467
468 The Owner-Trustee hereby appoints the Lessee as
469 its agent to dispose of any Unit suffering a Casualty Occur-
470 rence or any component thereof before and after the expira-
471 tion of this Lease, at the best price obtainable on an "as
472 is, where is" basis. Provided that the Lessee has previous-
473 ly paid the Casualty Value to the Owner-Trustee, the Lessee
474 shall be entitled to the proceeds of such sale to the extent
475 they do not exceed the Casualty Value of such Unit, and
476 shall pay any excess to the Owner-Trustee.

477
478 The Casualty Value of each Unit as of the payment
479 date on which payment is to be made as aforesaid shall be
480 that percentage of the Purchase Price of such Unit as is set
481 forth in Schedule E hereto opposite such date.

482
483 In the event of the requisition for use by the
484 United States Government of any Unit during the term of this
485 Lease or any renewal thereof, all of the Lessee's obliga-
486 tions under this Lease with respect to such Unit shall con-
487 tinue to the same extent as if such requisition had not
488 occurred, except that if such Unit is returned by the
489 Government at any time after the end of the term of this
490 Lease or any renewal thereof, the Lessee shall be obligated
491 to return such Unit to the Owner-Trustee pursuant to §11 or
492 §12 hereof, as the case may be, promptly upon such return by
493 the Government rather than at the end of the term of this
494 Lease or any renewal thereof, but Lessee shall in all other
495 respects comply with the provisions of said §11 or §12, as
496 the case may be, with respect to such Unit. All payments
497 received by the Owner-Trustee or the Lessee from the
498 Government for the use of such Unit during the term of this
499 Lease or any renewal thereof shall be paid over to, or
500 retained by, the Lessee provided no Event of Default (or
501 other event which after notice or lapse of time or both
502 would become an Event of Default) shall have occurred and be
503 continuing; and all payments received by the Owner-Trustee
504 or the Lessee from the Government for the use of such Unit
505 after the term of this lease or any renewal thereof, shall
506 be paid over to, or retained by, the Owner-Trustee.

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508. Except as hereinabove in this §7 provided, the
509 Lessee shall not be released from its obligations hereunder
510 in the event of, and shall bear the risk of, any Casualty
511 Occurrence to any Unit from and after the date hereof.

512
513 The Lessee shall at all times while this Lease is
514 in effect at its own expense maintain or cause to be carried
515 (i) property insurance in respect of the Units at the time
516 subject hereto; provided, however, that the Lessee may
517 self-insure such Units to the extent it self-insures equip-
518 ment similar to the Units and to the extent such
519 self-insurance is consistent with prudent industry practice,
520 and (ii) public liability insurance with respect to third
521 party personal and property damage and the Lessee will con-
522 tinue to carry such insurance in such amounts and for such
523 risks and with such insurance companies as is consistent
524 with prudent industry practice but in any event at least,
525 comparable in amounts against risk customarily insured
526 against by the Lessee in respect of equipment owned or
527 leased by it similar in nature to the Units, in each case
528 satisfactory to the Owner-Trustee. The proceeds thereof
529 shall be payable to the Owner-Trustee and the Lessee, as
530 their interest may appear, during the term of this Lease or
531 any renewal thereof. Any policies of insurance carried in
532 accordance with this paragraph shall (i) require 30 days
533 prior notice of cancellation or material change in coverage
534 to the Owner-Trustee, the Owner and the Vendor, and (ii)
535 name the Owner-Trustee, Owner and the Vendor as additional
536 insureds as their respective interests may appear and in the
537 event such policies shall contain breach of warranty
538 provisions such policies shall provide that in respect of
539 the interests of the Owner-Trustee, the Owner and the Vendor
540 in such policies the insurance shall not be invalidated by
541 any action or inaction of the Lessee or any other person
542 (other than the Owner-Trustee, the Owner and the Vendor) and
543 shall insure the Owner-Trustee, the Owner and the Vendor
544 regardless of any breach or violation of any warranty, dec-
545 laration or condition contained in such policies by the Les-
546 see or by any other person (other than the Owner-Trustee,
547 the Owner and the Vendor).

548
549 Upon the execution of this Lease, and thereafter
550 not less than 15 days prior to the expiration dates of the
551 expiring policies theretofore delivered pursuant to this §7,
552 the Lessee shall deliver to the Owner-Trustee duplicate
553 originals of all policies (or in the case of blanket

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554 policies, certificates thereof issued by the insurers
555 thereunder) for the insurance maintained pursuant to the §7;
556 Provided, however, that if the delivery of a formal policy
557 or certificate, as the case may be, is delayed, the Lessee
558 shall deliver an executed binder with respect thereto and
559 shall deliver the formal policy or certificate, as the case
560 may be, upon receipt thereof.

561

562 In the event the Lessee shall fail to maintain in-
563 surance as herein provided, the Owner-Trustee may at its
564 option provide such insurance (giving the Lessee prompt
565 written notice thereof) and, in such event, the Lessee
566 shall, upon demand from time to time, reimburse the
567 Owner-Trustee for the cost thereof together with interest,
568 on the amount of the cost to the Owner-Trustee of such in-
569 surance which the Lessee shall have failed to maintain, at
570 the rate per annum specified in §17 hereof.

571

572 If the Owner-Trustee shall receive any insurance
573 proceeds or condemnation payments in respect of Units suf-
574 fering a casualty occurrence, the Owner-Trustee shall pay
575 such proceeds or condemnation payments to the Lessee up to
576 an amount equal to the Casualty Value with respect to a Unit
577 paid by the Lessee and any balance of such proceeds or con-
578 demnation payments shall remain the property of the
579 Owner-Trustee; provided, however, that no Event of Default
580 shall have occurred and the Lessee shall have made payment
581 of the Casualty Value thereof to the Owner-Trustee. All in-
582 surance payments received by the Owner-Trustee in respect of
583 any Unit not suffering a Casualty Occurrence shall be paid
584 to the Lessee upon proof satisfactory to the Owner-Trustee
585 that any damage to such Unit in respect of which such
586 proceeds were paid has been fully repaired.

587

588 §8. Reports Financial Disclosure. On or before
589 April 1 in each year, commencing with the calendar year
590 1984, the Lessee will furnish to the Owner-Trustee, the
591 Owner and the Vendor an accurate statement (a) setting forth
592 as at the preceding December 31 the amount, description and
593 numbers of all Units then leased hereunder and covered by
594 the Security Document, the amount, description and numbers
595 of all Units that have suffered a Casualty Occurrence or to
596 the knowledge of the Lessee are then undergoing repairs
597 (other than running repairs) or are then withdrawn from use
598 pending repairs (other than running repairs) and such other
599 information regarding the condition and state of repair of

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600 the Units as the Owner-Trustee or the Vendor may reasonably
601 request and (b) stating that, in the case of all Units
602 repainted or repaired during the period covered by such
603 statement, the numbers and the markings required by §5
604 hereof and the Security Documents have been preserved or
605 replaced. The Owner-Trustee shall have the right by its
606 agents, to inspect the Units and the Lessee's records with
607 respect thereto at such reasonable times as the
608 Owner-Trustee may request during the continuance of this
609 lease. The Lessee shall deliver to the Owner-Trustee, the
610 Owner and the Vendor promptly upon transmission thereof,
611 copies of all reports which the Lessee files with the
612 Securities and Exchange Commission (or any governmental body
613 or agency succeeding to the functions of the Securities and
614 Exchange Commission), and a copy of Lessee's Annual Report
615 Form 1 which it files with the Interstate Commerce Commission.
616

617 §9. Disclaimer of Warranties; Compliance with
618 Laws and Rules; Maintenance; Indemnification. NEITHER THE
619 OWNER-TRUSTEE NOR THE OWNER MAKES, HAS MADE OR SHALL BE
620 DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION,
621 EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF,
622 OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMAN-
623 SHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND
624 NEITHER THE OWNER-TRUSTEE NOR THE OWNER MAKES ANY WARRANTY
625 OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY
626 PARTICULAR PURPOSE NOR AS TO TITLE TO THE UNITS OR ANY COM-
627 PONENT THEREOF, NOR ANY OTHER REPRESENTATION OR WARRANTY,
628 EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT (EITHER UPON
629 DELIVERY THEREOF TO THE LESSEE OR OTHERWISE). IT BEING
630 AGREED THAT ALL SUCH RISKS, AS BETWEEN THE OWNER-TRUSTEE AND
631 THE OWNER AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE; but
632 the Owner-Trustee hereby irrevocably appoints and
633 constitutes the Lessee its agent and attorney-in-fact during
634 the term of this lease to assert and enforce from time to
635 time, in the name of and for the account of the
636 Owner-Trustee and/or the Lessee, as their interests may
637 appear, at the Lessee's sole cost and expense, whatever
638 claims and rights the Owner-Trustee may have against the
639 Builder, including, but not limited to, any claims and
640 rights arising under the provisions of Items 3 and 4 of
641 Annex A to the Security Documents. The Owner-Trustee and
642 the Owner shall have no responsibility or liability to the
643 Lessee or any other person with respect to any of the fol-
644 lowing: (1) any liability, loss or damage caused or alleged
645 to be caused directly or indirectly by any Units or by any

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646 inadequacy thereof or deficiency or defect therein or by any
647 other circumstance in connection therewith; (ii) the use,
648 operation or performance of any Units or any risks relating
649 thereto; (iii) any interruption of service, loss of business
650 or anticipated profits or consequential damages; or (iv) the
651 delivery, operation, servicing, maintenance, repair, im-
652 provement or replacement of any Units. The Lessee's
653 execution of this Lease shall be conclusive evidence as
654 between the Lessee and the Owner-Trustee that the Units are
655 in all the foregoing respects satisfactory to the Lessee,
656 and the Lessee will not assert any claim of any nature what-
657 soever against the Owner-Trustee or the Vendor based on any
658 of the foregoing matters.

659

660 The Lessee agrees, for the benefit of the
661 Owner-Trustee, the Owner and the Vendor, to comply in all
662 respects (including, without limitation, with respect to the
663 use, maintenance and operation of each Unit) with all laws
664 of the jurisdictions in which its operations involving the
665 Units may extend, with the Interchange Rules of the Associa-
666 tion of American Railroads and with all lawful rules of the
667 United States Department of Transportation, the Interstate
668 Commerce Commission and any other legislative, executive,
669 administrative or judicial body exercising any power or ju-
670 risdiction over the Units, to the extent that such laws and
671 rules affect the title, operation or use of the Units and in
672 the event that such laws or rules require any alteration,
673 replacement or addition of or to any part of any Unit, the
674 Lessee will fully conform therewith at its own expenses;
675 provided, however, that the Lessee may, in good faith,
676 contest the validity or application of any such law or rule
677 in any reasonable manner which does not, in the opinion of
678 the Owner-Trustee or the Vendor, adversely affect the prop-
679 erty or rights of the Owner-Trustee or the Vendor under this
680 Lease or under the Security Document.

681

682 The Lessee agrees that, at its own cost and ex-
683 pense, it will maintain and keep each Unit (including any
684 parts installed on or replacements made to any Unit and con-
685 sidered an accession thereto as hereinbelow provided) which
686 is subject to this Lease in good order and proper repair.

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689 Any and all additions to any Unit and any and all
690 parts installed on or replacements made to any Unit (other
691 than any special devices, racks or assemblies at any time
692 attached or affixed to any such Unit, the cost or purchase

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693 price of which was not included in the Purchase Price of
694 such Unit and which are not required for the operation or
695 use of such Unit by the Interstate Commerce Commission, the
696 United States Department of Transportation or any other leg-
697 islative, executive, administrative or judicial body exer-
698 cising any power or jurisdiction of such Unit) shall be con-
699 sidered accessions to such Unit and, without cost or expense
700 to the Owner-Trustee or the Vendor, there shall immediately
701 be vested in the Owner-Trustee and the Vendor the same in-
702 terests in such accessions as the interests of the
703 Owner-Trustee and the Vendor in such Unit. The Lessee may
704 make alterations or modifications to any Unit so long as
705 they do not affect the value of such Unit materially and ad-
706 versely. The Lessee shall not permit any special devices,
707 rack or assembly to be attached or affixed to any Unit which
708 may not be readily removed from such Unit without materially
709 impairing such Unit or the value thereof unless such special
710 device, rack or assembly is to be considered an accession to
711 such Unit.

712

713 The Lessee shall pay, and shall protect, indemnify
714 and hold the Owner-Trustee, the Owner, the Vendor and any
715 assignee thereof, and their respective successors, assigns,
716 agents and servants (hereinafter called Indemnified
717 Persons), harmless from and against any and all causes of
718 action, suits, penalties, claims, demands or judgments, of
719 any nature whatsoever which may be imposed on, incurred by
720 or asserted against any Indemnified Person (including any or
721 all liabilities, obligations, damages, costs, disbursements,
722 expenses [including without limitation attorneys' fees and
723 expenses of any Indemnified Person] relating thereto) in any
724 way relating to or arising, or alleged to arise out of this
725 Lease or the Units, including without limitation those in
726 any way relating to or arising or alleged to arise out of
727 (i) the manufacture, construction, purchase, acceptance, re-
728 jection, ownership, delivery, non-delivery, lease,
729 possession, use, operation, condition, sale, return or other
730 disposition of any Unit or portion thereof, (ii) any latent
731 and other defects whether or not discoverable by the
732 Owner-Trustee or the Lessee, (iii) any claim for patent,
733 trademark or copyright infringement, (iv) any claims based
734 on strict liability in tort, (v) any injury to or the death
735 of any person or any damage to or loss of property on or
736 near the Units or in any manner growing out or concerned
737 with, or alleged to grow out of or be connected with, the
738 ownership, use, replacement, adaptation or maintenance of the

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739 Units or of any other equipment in connection with the Units
740 (whether owned or under the control of the Owner-Trustee,
741 the Lessee or any other person) or resulting or alleged to
742 result from the condition of any thereof, (vi) any viole-
743 tion, or alleged violation, of any provision of this Lease
744 (except by the Owner-Trustee) or of any agreement, law,
745 rule, regulation, ordinance or restriction, affecting or ap-
746 plicable to the Units or the leasing, ownership, use, re-
747 placement, adaptation or maintenance thereof, or, (vii) any
748 claim arising out of any of the Owner-Trustee's obligations
749 under the Original Lease, the Original Lease Assignment, the
750 Lease Assignment, the Security Document, the Participation
751 Agreement, the Lease Assignment or the Assignment of Lease,
752 except to the extent such claim arises from an act or omis-
753 sion of the Owner-Trustee. The Lessee shall be obligated
754 under this §9, irrespective of whether any Indemnified
755 Person shall also be indemnified with respect to the same
756 matter under any other agreement by any other person, and
757 the Indemnified Person seeking to enforce the indemnifica-
758 tion may proceed directly against the Lessee under this §9
759 without first resorting to any such other rights of indemni-
760 fication. In case any action, suit or proceeding is brought
761 against any Indemnified Person in connection with any claim
762 indemnified against hereunder, the Lessee may and, upon such
763 Indemnified Person's request, will at the Lessee's expense
764 resist and defend such action, suit or proceeding, or cause
765 the same to be resisted or defended by counsel selected by
766 the Lessee and approved by such Indemnified Person, as the
767 case may be, and, in the event of any failure by Lessee to
768 do so, the Lessee shall pay all costs and expenses
769 (including without limitation attorney's fees and expenses)
770 incurred by such Indemnified Person in connection with such
771 action, suit or proceeding. In the event the Lessee is
772 required to make any payment under this §9, the Lessee shall
773 pay such Indemnified Person an amount which, after deduction
774 of all taxes required to be paid by such Indemnified Person,
775 as the case may be, in respect of the receipt thereof under
776 the laws of the United States or of any political subdivi-
777 sion thereof (after giving credit for any savings in respect
778 of any such taxes by reason of deductions, credits or allow-
779 ances in respect of the payment of the expense indemnified
780 against, and of any other such taxes as determined in the
781 sole discretion of the Indemnified Person), shall be equal
782 to the amount of such payment. The Lessee and the
783 Owner-Trustee each agrees to give each other promptly upon
784 obtaining knowledge thereof written notice of any claim or

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785 liability hereby indemnified against. Upon the payment in
786 full of any indemnities as certained in this §9 by the Les-
787 see, and provided that no Event of Default (or other event
788 which with lapse of time or notice or both would constitute
789 an Event of Default) shall have occurred and be continuing,
790 it shall be subrogated to any right of such Indemnified
791 Person in respect of the matter against which indemnity has
792 been given. Any payments received by such Indemnified
793 Person from any person (except the Lessee) as a result of
794 any matter with respect to which such Indemnified Person has
795 been indemnified by the Lessee pursuant to this §9 shall be
796 paid over to the Lessee to the extent necessary to reimburse
797 the Lessee for indemnification payments previously made.

799

800 The Lessee further agrees to indemnify, protect
801 and hold harmless the Vendor and each Builder as third party
802 beneficiaries hereof from and against any and all liability,
803 claims, costs, charges and expenses, including royalty pay-
804 ments and counsel fees, in any manner imposed upon or accru-
805 ing against the Vendor because of the use in or about the
806 construction or operation of any of the Equipment of any ar-
807 ticle or material specified by the Lessee and not
808 manufactured by that Builder or of any design, system,
809 process, formula or combination specified by the Lessee and
810 not developed or purported to be developed by that Builder
811 which infringes or is claimed to infringe on any patent or
812 other right. The Lessee will give notice to each Builder of
813 any claim known to the Lessee from which liability may be
814 charged against that Builder hereunder.

815

816 The indemnities contained in this §9 shall survive
817 the expiration or termination of this Lease with respect to
818 all events, facts, conditions or other circumstances occur-
819 ring or existing prior to such expiration or termination and
820 are expressly made for the benefit of, and shall be enforce-
821 able by, any Indemnified Person. None of the indemnities in
822 this §9 shall be deemed to create any rights of subrogation
823 in any insurer or third party against the Lessee therefor,
824 from or under any Indemnified Person, whether because of any
825 claim paid or defense provided for the benefit thereof or
826 otherwise.

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828 The Lessee agrees to prepare and deliver to the
829 Owner-Trustee within a reasonable time prior to the required
830 date of filing (or, to the extent permissible, file on be-
831 half of the Owner-Trustee) any and all reports (other than

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832 income tax returns) to be filed by the Owner-Trustee with
833 any federal, state or other regulatory authority by reason
834 of the ownership by the Owner-Trustee or the Vendor of the
835 Units or the leasing thereof to the Lessee.

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837 §10. Default. If, during the continuance of this
838 Lease, one or more of the following events (each such event
839 being hereinafter sometimes called an Event of Default)
840 shall occur:

841

842 A. payment of any part of the rental provided in
843 §3 hereof (as such rentals may be increased pursuant to
844 §9 hereof) or payment in respect of any Casualty Occur-
845 rence pursuant to §7 hereof shall not be made by or on
846 behalf of the Lessee, and such failure to make payment
847 shall continue for five business days after such pay-
848 ment is due; or

849

850 B. default shall be made in the observance or
851 performance of any other of the covenants, conditions
852 and agreements on the part of the Lessee contained
853 herein or in the Consent or of the Lessee, as Guar-
854 antee, contained in the Security Document or the Guar-
855 anty, and such default shall continue for 20 days after
856 written notice from the Owner-Trustee or the Vendor to
857 the Lessee specifying the default and demanding that
858 the same be remedied; or

859

860 C. a petition for reorganization under Title 11
861 of the United States Code, as now constituted or as
862 said Title 11 may be hereafter amended, shall be filed
863 by or against the Lessee and, unless such petition
864 shall have been dismissed, nullified, stayed or other-
865 wise rendered ineffective (but then only so long as
866 such stay shall continue in force or such ineffec-
867 tiveness shall continue), all the obligations of the
868 Lessee hereunder shall not have been and shall not con-
869 tinue to have been duly assumed in writing, pursuant to
870 a court order or decree, by a trustee or trustees
871 appointed (whether or not subject to ratification) in
872 such proceedings in such manner that such obligations
873 shall have the same status as obligations incurred by
874 such trustee or trustees, within 30 days after such ap-
875 pointment, if any, or 60 days after such petition shall
876 have been filed, whichever shall be earlier; or

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878 D. any other proceedings shall be commenced by or
879 against the Lessee for any relief which includes, or
880 might result in, any modification of the obligations of
881 the Lessee hereunder under any bankruptcy or insolvency
882 laws, or laws relating to the relief of debtors, read-
883 justments of indebtedness, reorganizations, arrange-
884 ments, compositions or extension (other than a law
885 which does not permit any readjustments of the obliga-
886 tions of the Lessee hereunder), and, unless such pro-
887 ceedings shall have been dismissed, nullified, stayed
888 or otherwise rendered ineffective (but then only so
889 long as such stay shall continue in force or such inef-
890 fectiveness shall continue), all the obligations of the
891 Lessee under this Lease shall not have been and shall
892 not continue to have been duly assumed in writing, pur-
893 suant to a court order or decree, by a trustee or
894 trustees or receiver or receivers appointed (whether or
895 not subject to ratification) for the Lessee or for the
896 property of the Lessee in connection with any such pro-
897 ceedings in such manner that such obligations shall
898 have the same status as obligations incurred by such a
899 trustee or trustees or receiver or receivers, within 30
900 days after such appointment, if any, or 60 days after
901 such proceedings shall have been commenced, whichever
902 shall be earlier; or

903
904 E. an event of default set forth in Article 16 of
905 the Security Document shall have occurred and be con-
906 tinuing;

907
908 then, in any such case, the Owner-Trustee, at its option,
909 may,

910
911 (a) proceed by appropriate court action or
912 actions either at law or in equity, to enforce
913 performance by the Lessee of the applicable
914 covenants of this Lease or to recover damages for
915 the breach thereof; or

916
917 (b) by notice in writing to the Lessee ter-
918 minate this Lease, whereupon all rights of the
919 Lessee to the use of the Units shall absolutely
920 cease and terminate as though this Lease had never
921 been made, but the Lessee shall remain liable as
922 hereinafter provided; and thereupon the
923 Owner-Trustee may by its agents enter upon the

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premises of the Lessee or other premises, in so far as the Lessee may be lawfully authorized to so permit, where any of the Units may be located, without judicial process if this can be done without breach of the peace and in accordance with due process of law, and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Owner-Trustee shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rental for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Owner-Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, and (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner-Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of rental.

The remedies in this Lease provided in favor of the Owner-Trustee shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The

971 Lessee hereby waives any requirements of law, now or
972 hereafter in effect, which might limit or modify the
973 remedies herein provided, to the extent that such waiver is
974 permitted by law. The Lessee hereby waives any and all ex-
975 isting or future claims to any offset against the rental
976 payments due hereunder, and agrees to make rental payments
977 regardless of any offset or claim which may be asserted by
978 the Lessee or on its behalf.

979

980 The failure of the Owner-Trustee to exercise the
981 rights granted it hereunder upon the occurrence of any of
982 the contingencies set forth herein shall not constitute a
983 waiver of any such right upon the continuation or recurrence
984 of any such contingencies or similar contingencies.

985

986 The Lessee also agrees to furnish the
987 Owner-Trustee, the Owner and the Vendor, promptly upon any
988 responsible officer's becoming aware of any condition which
989 constitutes an Event of Default under the Lease or which,
990 after notice or lapse of time or both, would constitute such
991 an Event of Default, written notice specifying such
992 condition and the nature and status thereof. For the
993 purposes of this Section, a "responsible officer" shall
994 mean, with respect to the subject matter of any covenant,
995 agreement or obligation of the Lessee in this Lease
996 contained, any corporate officer of the Lessee who in the
997 normal performance of his operational responsibilities would
998 have knowledge of such matter and the requirements of this
999 Lease with respect thereto.

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1001 §11. Return of Units upon Default. If this Lease
1002 shall terminate pursuant to §10 hereof, the Lessee shall
1003 forthwith deliver possession of the Units to the
1004 Owner-Trustee and shall give prompt telegraphic and written
1005 notice to the Association of American Railroads and all
1006 railroads having possession of any Unit so to return such
1007 Units. Each Unit returned to the Owner-Trustee pursuant to
1008 this §11 shall (i) be in the same operating order, repair
1009 and condition as when originally delivered to the Lessee,
1010 reasonable wear and tear and modifications, if any, permit-
1011 ted by this Lease excepted, (ii) have attached or affixed
1012 thereto any special device, rack or assembly considered an
1013 accession thereto as provided in §9 hereof and have removed
1014 therefrom any special device, rack or assembly not so con-
1015 sidered an accession thereto and (iii) meet the standards
1016 then in effect under the Interchange Rules of the

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1017 Association of American Railroads, if applicable. For the
1018 purpose of delivering possession of any Unit or Units to the
1019 Owner-Trustee as above required, the Lessee shall at its own
1020 cost, expense and risk:

1021

1022 (a) forthwith and in the usual manner cause
1023 such Units to be transported to such location as
1024 shall reasonably be designated by the
1025 Owner-Trustee and there assembled,

1026

1027 (b) furnish and arrange for the
1027 Owner-Trustee to store such Units on any lines of
1028 railroad or premises approved by Owner-Trustee
1029 until such Units have been sold, leased or other-
1030 wise disposed of by the Owner-Trustee, and

1032

1033 (c) cause the Units to be moved to such
1034 interchange point or points as shall be designated
1035 by the Owner-Trustee upon any sale, lease or other
1036 disposal of all or any of the Units.

1038

1039 The assembling, delivery, storage and transporting of the
1040 Units as hereinbefore provided shall be at the expense and
1041 risk of the Lessee and are of the essence of this Lease, and
1042 upon application to any court of equity having jurisdiction
1043 in the premises the Owner-Trustee shall be entitled to a
1044 decree against the Lessee requiring specific performance of
1045 the covenants of the Lessee so to assemble, deliver, store
1046 and transport the Units. During any storage period, the
1047 Lessee will permit the Owner-Trustee or any person desig-
1048 nated by it, including the authorized representative or rep-
1049 resentatives of any prospective purchaser of any such Unit,
1050 to inspect the same. In the event that the Units or any
1051 thereof are sold pursuant to the exercise of the vendor's
1052 remedies under the Security Documents, the Lessee shall pay
1053 to the Owner-Trustee the per diem interchange (pursuant to
1054 the Interchange Rules of the Association of American Rail-
1055 roads) for each such Unit which shall not have been assem-
1056 bled, delivered and stored, as hereinbefore provided, by the
1057 date of such sale for each day from the date of such sale to
1058 the date of delivery to the purchaser thereof.

1060

1061 Without in any way limiting the obligation of the
1062 Lessee under the foregoing provisions of this §11, the Les-
1063 see hereby irrevocably appoints the Owner-Trustee as the
1064 agent and attorney of the Lessee, with full power and

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1065 authority, at any time while the Lessee is obligated to
1066 deliver possession of any Unit to the Owner-Trustee, to
1067 demand and take possession of such Unit in the name and on
1068 behalf of the Lessee from whomever shall be in possession
1069 of such Unit at the time.

1070.

1071 §12. Assignment; Possession and Use. This Lease
1072 shall be assignable in whole or in part by the Owner-Trustee
1073 without the consent in whole or in part by the Owner-Trustee
1074 without the consent of the Lessee, but the Lessee shall be
1075 under no obligation to any assignee of the Owner-Trustee
1076 other than the Vendor except upon written notice of such as-
1077 signment from the Owner-Trustee. All the rights of the
1078 Owner-Trustee hereunder (including, but not limited to, the
1079 rights under §§6, 7 and 10 and the rights to receive the
1080 rentals payable under this Lease) shall inure to the benefit
1081 of the Owner and the Owner's and the Owner-Trustee's
1082 assigns.

1083

1084 So long as no Event of Default or event of default
1085 exists hereunder or under the Security Document and the Les-
1086 see shall have fully complied with the provisions of this
1087 §12, the Lessee shall be entitled to the possession of the
1088 Units and also to sublease the Units to, or to permit their
1089 use under the terms of car contracts by, a sublessee or user
1090 incorporated in the United States of America (or any State
1091 thereof or in the District of Columbia), upon lines of rail-
1092 road owned or operated by a railroad company or companies
1093 incorporated in the United States of America (or any State
1094 thereof or the District of Columbia), or over which such
1095 railroad company or companies have trackage rights or rights
1096 for operation of their trains, and upon connecting and other
1097 carriers in the usual interchange of traffic in the conti-
1098 nental United States, Canada and Mexico, but only upon and
1099 subject to all the terms and conditions of this Lease;
1100 provided, however, that if the Lessee subleases or permits
1101 the use of any Unit in Canada (or any Province or territory
1102 thereof) or in Mexico (or any State or the Federal District
1103 thereof), the Lessee shall, except as otherwise provided in
1104 §15 hereof, first have (a) taken all the necessary action to
1105 protect the right, title and interest of the Owner-Trustee
1106 and the vendor in the Units to be so subleased or used and
1107 (b) furnished the Owner-Trustee and the Vendor with an
1108 opinion of Canadian or Mexican counsel, as the case may be,
1109 satisfactory to the Owner-Trustee and the Vendor to the
1110 effect that such action is all that is necessary to protect

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1111 the right, title and interest of the Owner-Trustee and the
1112 Vendor in such Units; provided, further, that no Units shall
1113 be used predominantly outside the United States of America
1115 within the meaning of section 48(a) of the International
1116 Revenue Code of 1954, as amended to the date hereof, nor
1117 shall the Lessee sublease the Units to, or permit their use
1118 by, any person in whose hands such Units would not qualify
1119 as "section 38" property within the meaning of such Code.

1120

1121 Any such sublease may provide that the sublessee,
1122 so long as it shall not be in default under such sublease,
1123 shall be entitled to the possession of the Units included in
1124 such sublease and the use thereof; provided, however, that
1125 every such sublease shall be subject to the rights and
1126 remedies of the Vendor under the Security Document, and the
1127 Owner-Trustee under this Lease.

1129

1130 The Lessee, at its own expense, will as soon as
1131 possible cause to be duly discharged any lien, charge, secu-
1132 rity interest or other encumbrance (except any sublease or
1133 car contract as aforesaid and other than an encumbrance re-
1134 sulting from claims against the Owner-Trustee or the Vendor
1135 not related to the ownership or leasing of, or the security
1136 interest of the Vendor to, the Units) which may at any time
1137 be imposed on or with respect to any Unit including any ac-
1138 cession thereto or the interest of the Owner-Trustee, the
1139 Vendor or the Lessee therein. The Lessee shall not, without
1140 the prior written consent of the Owner-Trustee, part with
1141 the possession or control of, or suffer or allow to pass out
1142 of its possession or control, any of the Units, except to
1143 the extent permitted by the provisions of this §12.

1145

1146 Nothing in this §12 shall be deemed to restrict
1147 the right of the Lessee to assign or transfer its leasehold
1148 interest under this Lease in the Units or possession of the
1149 Units to any corporation incorporated under the laws of any
1150 state of the United States of America or the District of
1151 Columbia (which shall have specifically assumed the obliga-
1152 tions of the Lessee hereunder and under the Consent by an
1153 appropriate instrument in writing) into or with which the
1154 Lessee shall have become merged or consolidated or which
1155 shall have acquired the property of the Lessee as an entire-
1156 ty or substantially as an entirety, provided that such as-
1157 signee or transferee will not, upon the effectiveness of
1158 such merger, consolidation or acquisition be in default
1159 under any provision of this Lease.

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1161 §13. Renewal Options. Provided that this Lease
1162 has not been earlier terminated and the Lessee is not in
1163 default hereunder, the Lessee may, by written notice
1164 delivered to the Owner-Trustee not less than one year prior
1165 to the end of the original term of this Lease elect to
1166 extend the term of this Lease in respect of all, but not
1167 fewer than all, the Units then covered by this Lease, for a
1168 five-year period commencing on the scheduled expiration of
1169 the original term of this Lease, at a rental payable in ten
1170 semiannual payments, payable on the semiannual anniversaries
1171 of the expiration of the original term, each in an amount
1172 equal to 50% of the amount of the final semiannual rental
1173 payable for such Units during the original term of the
1174 Lease.

1175
1176 Provided that this lease has not been earlier ter-
1177 minated and the Lessee is not in default hereunder, the Les-
1178 see may by written notice delivered to the Owner-Trustee not
1179 less than one year prior to the end of any extended term of
1180 this Lease, elect to extend the term of this Lease in
1181 respect of all but not fewer than all of the Units then
1182 covered by this Lease, for an additional period not less
1183 than one year commencing on the scheduled expiration of any
1184 extended term of this Lease, at a "Fair Market Rental" pay-
1185 able in semiannual payments on the semiannual anniversaries
1186 of the expiration of the preceding extended term. Addition-
1187 al successive renewals may be made on the same terms and
1188 conditions as set forth in this paragraph.

1189
1190 Fair Market Rental shall be determined on the
1191 basis of, and shall be equal in amount to, the rental which
1192 would obtain in an arm's-length transaction between an
1193 informed and willing lessee (other than a lessee currently
1194 in possession) and an informed and willing lessor under no
1195 compulsion to lease and, in such determination, costs of re-
1196 moval from the location of current use shall not be a deduc-
1197 tion from such rental. If, after 60 days from the giving of
1198 notice by the Lessee of the Lessee's election to extend the
1199 term of this Lease, the Owner-Trustee and the Lessee are un-
1200 able to agree upon a determination of the Fair Market Rental
1201 of the Units, such rental shall be determined in accordance
1202 with the foregoing definition by the following procedure:
1203 If either party to such determination shall have given writ-
1204 ten notice to the other requesting determination of such
1205 value by this appraisal procedure, the parties shall consult
1206 for the purpose of appointing a qualified independent

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1207 appraiser by mutual agreement. If no such appraiser is so
1208 appointed within 20 business days after such notice is
1209 given, each party shall appoint an independent appraiser
1210 within 25 business days after such notice is given, and the
1211 two appraisers so appointed shall within 35 business days
1212 after such notice is given appoint a third independent ap-
1213 praiser. If no such third appraiser is appointed within 35
1214 business days after such notice is given, either party may
1215 apply, to make such appointment, to the American Arbitration
1216 Association, and both parties shall be bound by any appoint-
1217 ment so made. Any appraiser or appraisers appointed pursu-
1218 ant to the foregoing procedure shall be instructed to deter-
1219 mine the Fair Market Rental of the Units subject to the pro-
1220 posed extended term within 90 days after his or their ap-
1221 pointment. If the parties shall have appointed a single ap-
1222 praiser or if either party shall have failed to appoint an
1223 appraiser, the determination of Fair Market Rental of the
1224 single appraiser appointed shall be final. If three ap-
1225 praisers shall be appointed, the determination of the ap-
1226 praiser which differs most from the other two appraisers
1227 shall be excluded, the remaining two determinations shall be
1228 averaged and such latter average shall be final and binding
1229 upon the parties hereto as the Fair Market Rental. The ap-
1230 praisal proceedings shall be conducted in accordance with
1231 the Commercial Arbitration Rules of the American
1232 Arbitration Association as in effect on the date hereof,
1233 except as modified hereby. The provision for this appraisal
1234 procedure shall be the exclusive means of determining Fair
1235 Market Rental and shall be in lieu of any judicial or other
1236 procedure for the determination thereof, and each party
1237 hereto hereby consents and agrees not to assert any judicial
1238 or other procedures. The expenses of the appraisal proce-
1239 dure shall be borne by the lessee.

1241

1242 §14. Return of Units upon Expiration of Term. As
1243 seen as practicable on or after the termination of the
1244 original or any extended term of this Lease, and in any
1245 event not later than 90 days thereafter, the Lessee will, at
1246 its own cost and expense, at the request of the
1247 Owner-Trustee, cause each unit to be transported to such
1248 point or points as shall be reasonably designated by the
1249 Owner-Trustee immediately prior to such termination and
1250 arrange for the Owner-Trustee to store such Unit on any
1251 lines or railroad or premises approved by the Owner-Trustee
1252 for a period not exceeding one year from the date such unit
1253 is first placed in storage pursuant to this §14; the

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1254 assembly, delivery, storage and transporting of such Unit to
1255 be at the expense and risk of the Lessee. During any such
1256 storage period the Lessee will permit the Owner-Trustee or
1257 any person designated by it, including the authorized repre-
1258 sentative or representatives of any prospective purchaser of
1259 such Unit, to inspect the same; provided, however, that the
1260 Lessee shall not be liable except in the case of negligence
1261 or intentional act of the Lessee or of its employees or
1262 agents and, except to the extent otherwise provided by law,
1263 for any injury to or the death of any person exercising, ei-
1264 ther on behalf of the Owner-Trustee or any prospective pur-
1265 chaser, the rights of inspection granted under this
1266 sentence. The assembly, delivery, storage and transporting
1267 of the Units as hereinbefore provided are of the essence of
1268 this lease, and upon application to any court of equity
1269 having jurisdiction in the premises, the Owner-Trustee shall
1270 be entitled to a decree against the Lessee requiring
1271 specific performance of the covenants of the Lessee so to
1272 cause the assembly, delivery, storage and transporting of
1273 the Units. Each Unit returned to the Owner-Trustee pursuant
1274 to this §14 shall (i) be in the same operating order, repair
1275 and condition as when originally delivered to the Lessee,
1276 reasonable wear and tear excepted, (ii) have attached or
1277 affixed thereto any special device, rack or assembly consid-
1278 ered an accession thereto as provided in §9 hereof and have
1279 removed therefrom any special device, rack or assembly not
1280 so considered an accession thereto and (iii) meet the
1281 standards then in effect under the Interchange Rules of the
1282 Association of American Railroads, if applicable.

1284
1285 §15. Recording. The Lessee, at its own expense,
1286 will cause this Lease, the Assignment of Lease and the Lease
1287 Assignment and any assignment hereof or thereof to be filed
1288 and recorded with the Interstate Commerce Commission in ac-
1289 cordance with Section 20(c) of the Interstate Commerce Act.
1290 The Lessee will undertake the filing, registering, deposit,
1291 and recording required of the Owner-Trustee under the Secu-
1292 rity Document and will from time to time do and perform any
1293 other act and will execute, acknowledge, deliver, file, reg-
1294 ister, record (and will refile, re-register, deposit and
1295 redeposit or re-record whenever required) any and all
1296 further instruments required by law or reasonably requested
1297 by the Owner-Trustee or the Vendor for the purpose of proper
1298 protection, to their satisfaction, of the Vendor's and the
1299 Owner-Trustee's respective interests in the Units, or for
1300 the purpose of carrying out the intention of this Lease, the

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1301 Security Document, the Lease Assignment, or the Assignment
1302 of Lease, provided, however, that the Lessee shall not be
1303 required to take any such action in respect of any ju-
1304 risdiction outside the United States if (1) the Lessee deems
1305 such action to be unduly burdensome, (2) after giving effect
1306 to the failure to take such action, the Lessee has taken all
1307 action required by law to protect the title of the
1308 Owner-Trustee and the Vendor to Units having a fair value of
1309 not less than 85% of the aggregate fair value of all the
1310 Units then subject to this lease, and (3) any Unit at any
1311 time located in such jurisdiction shall have been marked
1312 with the markings specified in §5 hereof.

1313

1314 The Lessee will promptly furnish to the Vendor and
1315 the Owner-Trustee evidence of all such filing, registering,
1316 depositing or recording, and an opinion or opinions of
1317 counsel for the Lessee with respect thereto satisfactory to
1318 the Vendor and the Owner-Trustee. This Lease shall be filed
1319 and recorded with the Interstate Commerce Commission within
1320 five (5) days of the latest acknowledgment hereto, or as
1321 soon thereafter as is reasonably practicable.

1322

1323 §16. [Intentionally Left Blank]

1324

1325 §17. Owner-Trustee's Right to Perform for the Les-
1326 see. If the Lessee fails to perform or comply with any of
1327 its agreements contained herein, the Owner-Trustee may upon
1328 notice to the Lessee itself perform or comply with such
1329 agreement, and the amount of the reasonable cost and ex-
1330 penses of the Owner-Trustee incurred in connection with such
1331 performance or compliance, together with interest on such
1332 amount at the rate per annum which Manufacturers Hanover
1333 Trust Company, New York, New York, charges for unsecured
1334 90-day loans to large corporate borrowers at the time in
1335 effect, shall be payable by the Lessee upon demand.

1336

1337 §18. Interest on Overdue Rentals. Anything to the
1338 contrary herein contained notwithstanding, any nonpayment of
1339 rentals and other obligations due hereunder shall result in
1340 the obligation on the part of the Lessee promptly to pay,
1341 to the extent legally enforceable, an amount equal to inter-
1342 est at 11-1/4% per annum on the overdue rentals and other
1343 obligations for the period of time during which they are
1344 overdue, or such lesser amount as may be legally enforce-
1345 able.

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1347 §19. Notices. Any notice required or permitted to
1348 be given by either party hereto to the other shall be deemed
1349 to have been given when delivered to such other party or
1350 deposited in the United States mails, first-class postage
1351 prepaid, addressed as follows:

1352
1353 if to the Owner-Trustee, at 45 Wall Street,
1354 New York, New York 10005, attention of Corporate
1355 Trust and Agency Division, with a copy to the
1356 Owner, at P.O. Box 8300, Stamford, Connecticut
1357 06904, attention of Manager - Operations, Leasing
1358 and Industrial Loans and attention of Loan Officer
1359 - Rail;

1360
1361 if to the Lessee, at 176 East Fifth Street,
1362 St. Paul, Minn. 55101 Attention of Senior Vice President,
1363 Administration and Planning;

1364
1365 or addressed to any party at such other address as such
1366 party shall hereafter furnish to the other parties in writ-
1367 ing. Any certificate, document or report required to be
1368 furnished by any party hereto to the other parties shall be
1369 delivered to the address set forth above for such party.
1370 Any notice to the Lessee regarding Lessee's failure to per-
1371 form any obligation hereunder shall also be furnished to the
1372 Owner-Trustee.

1373
1374 §20. Owner-Trustee Acting as Trustee. The repre-
1375 sentations, undertakings and agreements herein made on the
1376 part of the Owner-Trustee are made and intended for the
1377 purpose of binding only the Trust Estate as such term is
1378 used in the Trust Agreement.

1379
1380 Whenever the term Owner-Trustee is used in this
1381 Lease it shall apply and refer to the Owner-Trustee and the
1382 Owner and any assignee of the Owner-Trustee.

1383
1384 §21. No Recourse. No recourse shall be had in
1385 respect to any obligation due under this Lease, or referred
1386 to herein, against any incorporator, stockholder, director
1387 or officer, as such, past, present or future, of the
1388 Owner-Trustee or the Lessee, or against the Owner or any
1389 other beneficiary of a trust for which the Owner-Trustee is
1390 acting as trustee, whether by virtue of any constitutional
1391 provision, statute or rule of law or by enforcement of any
1392 assessment or penalty or otherwise, all such liability,

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1393 whether at common law, in equity, by any constitutional
1394 provision, statute or otherwise, of incorporators, stock-
1395 holders, directors, officers, as such, or beneficiaries
1396 being forever released as a condition of and as considera-
1397 tion for the execution of this Lease.

1398

1399 §22. Severability; Effect and Modification of
1400 Lease; Third Party Beneficiaries. Any provision of this
1401 lease which is prohibited or unenforceable in any ju-
1402 risdiction, shall be, as to such jurisdiction, ineffective
1403 to the extent of such prohibition or unenforceability with-
1404 out invalidating the remaining provisions hereof, and any
1405 such prohibition or unenforceability in any jurisdiction
1406 shall not invalidate or render unenforceable such provision
1407 in any other jurisdiction.

1408

1409 This Lease exclusively and completely states the
1410 rights of the Owner-Trustee and the Lessee with respect to
1411 the leasing of the Units and supersedes all other agree-
1412 ments, oral or written, with respect thereto, except the
1413 Participation Agreement. No variation or modification of
1414 this lease and no waiver of any of its provisions or
1415 conditions shall be valid unless in writing and signed by
1416 duly authorized signatories for the Owner-Trustee and the
1417 Lessee.

1418

1419 Nothing in this Lease shall be deemed to create
1420 any right in any person not a party hereto (other than the
1421 Owner, the Vendor and the permitted successors and assigns
1422 of a party) and this instrument shall not be construed in
1423 any respect to be a contract in whole or in part for the
1424 benefit of any third party except as aforesaid.

1425

1426 §23. Other Obligations. In the event that any of
1427 the covenants of the Owner-Trustee under the first paragraph
1428 of Article 7, the second, fifth and seventh paragraphs of
1429 Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19
1430 of the Security Document (without reference to any limita-
1431 tion of liability contained in Article 22 or the last para-
1432 graph of Article 4 of the Security Document) are not com-
1433 plied with through the performance by the Lessee of its ob-
1434 ligations specifically provided for in this Lease, the Les-
1435 see shall, as additional obligations under this Lease, take
1436 all such action as may be necessary to enable compliance to
1437 be made with such covenants under the Security Document.

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§24. Execution. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Vendor shall be deemed to the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

§25. Law Governing. The terms of this Lease 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 rights conferred by 49 U.S.C. §11303.

§26. Continuity of Lessee's Obligations Under the Guaranty. Anything herein to the contrary notwithstanding, the Lessee agrees for the benefit of the Owner, the Owner-Trustee and the Vendor that the execution and delivery of this Lease shall in no way affect the obligations of the Lessee under the Guaranty, the Participation Agreement or the Security Document, such obligations to continue in full force and effect whether such obligations are due as of the date hereof or mature at any time thereafter.

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

Burlington Northern Railroad
Company

[CORPORATE SEAL]

Attest:

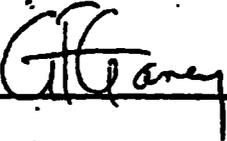
A. H. ...

By *A. Charles*
Senior Vice President
Planning and Administration

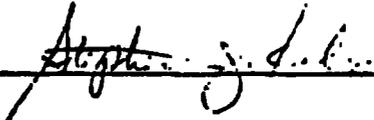
UNITED STATES TRUST COMPANY
OF NEW YORK, as trustee

[CORPORATE SEAL]

Attest:



ASSISTANT SECRETARY

By 

ASST. VICE PRESIDENT

STATE OF MINNESOTA)
) ss:
COUNTY OF RAMSEY)

On this 23rd day of November, 1983, before me personally appeared R. F. Garland, to me personally known, who, being by me duly sworn, says that he is the Senior Vice President Planning and Administration of BURLINGTON NORTHERN RAILROAD 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.

Susan B Hill
Notary Public
SUSAN B HILL
NOTARY PUBLIC

(Notarial Seal)

My Commission expires:

STATE OF New York)
) ss:
COUNTY OF New York)

On this 15th day of December, 1983, before me personally appeared STEPHEN I KABA, to me personally known, who, being by me duly sworn, says that he is ASST. VICE PRESIDENT of UNITED STATES TRUST COMPANY OF NEW YORK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Christine C Collins
Notary Public

(Notarial Seal)

My Commission expires:

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 41-4624735
Qualified in Queens County
Commission Expires March 30, 1984

