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16943
RECORDATION NO. _____ FILED 1425
JUL 25 1990 -9 50 AM
INTERSTATE COMMERCE COMMISSION

July 25, 1990

0-206A001

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

Dear Ms. Lee:

Enclosed is a Locomotive Operating Lease Agreement dated as of July 11, 1990, between the following parties:

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

Lessee: Atchison, Topeka & Santa Fe Railway
80 East Jackson Blvd.
Chicago, IL 60604

The equipment included in this agreement is as follows:

Equipment: 20, GP-60 Locomotives
#140-159

Please file this document as a primary agreement. The filing fee of $15 is enclosed. Thank you for your kind assistance.

Sincerely,

Mary Ann Oster

Mary Ann Oster
Research Consultant

Enclosures

JUL 25 9 44 AM '90
RECORDATION UNIT

Counterpart Mary A Oster

16943
RECORDATION NO. _____ FILED 1425
JUL 25 1990 -9 50 AM
INTERSTATE COMMERCE COMMISSION

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

LOCOMOTIVE OPERATING LEASE AGREEMENT

THIS LEASE, made and entered into as of this 16th day of July 1990, by and between Electro-Motive Division, General Motors Corporation, a Delaware corporation, hereinafter called "Lessor", and The Atchison, Topeka and Santa Fe Railway Company, a Delaware corporation, hereinafter called "Lessee".

LESSOR AND LESSEE HEREBY AGREE AS FOLLOWS:

1. Lease-Daily Basis: Lessee agrees to lease from Lessor on a daily basis for a period not to extend beyond March 15, 1991, unless otherwise extended by agreement of the parties hereto, the locomotives described in Exhibit A attached hereto, together with all additions and accessories incorporated therein and/or affixed thereto (the "Locomotive(s)").

   The Lessee will cause the Locomotives to be kept numbered with the identification numbers set forth thereon at the time of their delivery hereunder and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of the Locomotive, in letters not less than one inch in height, the words "Ownership Subject To A Security Agreement filed with the Interstate Commerce Commission". The Lessee will not place the Locomotive in operation or exercise any control or dominion over the same unless such words are so marked and will replace

promptly any such markings which may be removed, obliterated, defaced or destroyed. The Lessee will not change the identification number of the Locomotive(s) unless and until a statement of the new number to be substituted therefor shall have been filed with the Lessor and duly filed and deposited by the Lessee in all public offices where this Lease shall have been filed and deposited.

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

2. Rent: This Lease shall commence with respect to each Locomotive when said Locomotive is delivered to Lessee and Lessee executes a "Certificate of Acceptance" in the form attached hereto as Exhibit B, and shall continue in effect until the purchase price of said Locomotive is paid in full pursuant to Section 2 of the Purchase Agreement B dated as of December 22, 1989 between the parties unless otherwise agreed to by the parties hereto; there shall, however, be an abatement of rent on each such Locomotive until the date specified for payment of such Locomotive under said Section 2, which date is herein called the "Rent Commencement Date" and shall continue until each Locomotive is returned to Lessor pursuant to Section 9 hereof." The Daily Rental shall be the product of: (X) an amount equal to the rate of interest publically announced from time to time and published in the Wall Street Journal as its prime rate and (Y) the purchase price of all locomotives delivered to and accepted by Lessee under this Lease; divided by 365.

Lessee shall not be entitled to any reduction of rent or setoff, counterclaim, recoupment or defense against rent or any other amount payable hereunder for any reason whatsoever, including, but not limited to, reductions, setoffs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except as otherwise provided herein; nor shall this Lease terminate or the obligations of Lessee be otherwise affected by reason of any defect in the condition, design, operation or fitness for use of the Locomotive or damage to or loss of possession or use or destruction of such Locomotive from whatever cause and of whatever duration, except as otherwise provided herein. Lessee acknowledges that: Lessor has no knowledge or information as to the condition or suitability for Lessee's purpose of the Locomotives and Lessor's decision to enter into this lease is made in reliance on Lessee's undertakings herein, including Lessee's express agreement not to assert against Lessor any claims, defenses, setoffs or counterclaims it may now or hereafter have against the Lessor.

3. Warranty: Lessor warrants to Lessee that the Locomotives are the kind and quality specified by Lessee and are suitable for the ordinary purposes for which such equipment is used. Lessor further warrants the Locomotive to be free from defects in material and workmanship which may develop under normal use in service within two (2) years from date of delivery and acceptance or before each such Locomotive has been operated 250,000 miles, whichever event shall first occur. Lessor agrees to

correct any such defects which examination shall disclose to Lessor's satisfaction to be defective, by repair or replacement F.O.B. factory 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 specifications or design to the same extent that the suppliers of such specialties warrant such items to Lessor.

There are no warranties, expressed or implied, made by Lessor except the warranties set out herein.

4. Place of Payment of Rent: Lessee shall wire transfer monthly in immediately available funds in payment of the daily rent to the following account:

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

5. Recordkeeping; Inspection: Lessee agrees to keep and maintain and make available to Lessor such record of Lessee's use, operation, inspection, repairs and maintenance of the Locomotives while in its possession as shall be reasonably required by Lessor. Lessor, by such agent or agents

as it may designate, shall have the right at all reasonable times to go upon the property of Lessee to inspect the Locomotives while in the possession of Lessee.

If requested, within five days of the end of the lease term, the Lessee will furnish to the Lessor a certificate signed by the chief mechanical officer of the Lessee (a) setting forth the repairs performed on the Locomotives during the term hereof and such other information regarding the condition and state of repair of the Locomotives as the Lessor may reasonably request. The Lessor, at its sole expense, shall have the right by its agents to inspect the Locomotives and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the term of this Lease.

The Lessee shall promptly notify the Lessor of any occurrence of an event of default, as defined in Section 21 hereof, or default, specifying such event of default or default and the nature and status thereof.

6. Loss or Destruction: In the event that a Locomotive during the term hereof shall become lost, stolen, destroyed, irreparably damaged, permanently rendered unfit for use, or, in the reasonable opinion of the Lessee, worn out or damaged beyond the economic limit of repair, from any cause whatsoever, (such occurrences being hereinafter called "Casualty Occurrences"), Lessee shall notify Lessor of such Casualty Occurrence. On the payment date next following the date of such Casualty Occurrence, Lessee shall pay to Lessor any unpaid rent due on or prior to such date. Lessee is responsible for insuring the Locomotives. Upon a Casu-

OK FT 7/16/90

alty Occurrence and in addition to all other sums payable under the terms of the Lease, the Lessee shall cause to be paid to the Lessor ~~$1,394,380~~ $1,393,914.50 TIF 7/12/90 per Locomotive (hereinafter referred to as "Casualty Value"). Upon making such payment in respect of any Locomotive(s), rentals on such Locomotive(s) shall cease as of the date of such payment, the term of this Lease as to such Locomotive(s) shall terminate, and title to and rights in such Locomotive(s) shall there upon vest in the Lessee.

In the event that a Locomotive is taken or requisitioned by condemnation or otherwise by the United States Government for a period of which shall exceed the remaining term hereof, or by any other government or governmental entity resulting in the loss of possession by the Lessee for a period of sixty (60) consecutive days, Lessor shall relieve Lessee from rental payments for the Locomotive effective with the date Locomotive was first requisitioned or condemned by said governmental agency and settle with that governmental agency for any proceeds that Lessor is entitled and Lessee shall immediately pay over to Lessor any proceeds received by Lessee that is compensation for Lessor's loss of its ownership interest in the Locomotives. For any periods of condemnation of less than sixty days the Lessee will continue to pay rental and handle with and retain any proceeds collected from the governmental agency.

7. Indemnity: The Lessee agrees to indemnify, protect and hold harmless the Lessor from and against all losses, damages, injuries, liabilities, claims (including, without limitations, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and ex-

penses in connection therewith, including, but not limited to, counsel fees and expenses, penalties, and interest, arising from or caused directly by: (a) Lessee's failure to promptly perform any of its obligations under the provisions of Sections 1, 2, 6, 7 and 20 of this Lease, or (b) injury to person or property resulting from or based upon the actual or alleged use, operation, delivery or transportation of any or all of the Locomotives or its location or condition, or (c) inadequacy of the Locomotives, or any part thereof, for any purpose or any deficiency or defect therein or the use or maintenance thereof or any repairs, servicing or adjustments thereto or any delay in providing or failure to provide any thereof or any interruption or loss of service or use thereof or any loss of business; and shall, at its own cost and expense, defend any and all suits which may be brought against Lessor, either alone or in conjunction with others upon any such liability or claim or claims and shall satisfy, pay and discharge any and all judgments and fines that may be recovered against Lessor in any such action or actions, provided, however, that (i) Lessor shall give Lessee written notice of any such claim or demand, and (ii) Lessee shall not be required to indemnify Lessor for any loss, liability or expense resulting from the gross negligence or willful misconduct of Lessor. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the expiration or termination of the term of this Lease.

Except as otherwise expressly provided in this Lease, the Lessee shall bear the responsibility and risk for, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the Locomotive.

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

8. Compliance with Law; Repair and Maintenance: Lessee shall comply with FRA, the interchange rules of the Association of American Railroads and all other applicable governmental laws, regulations and requirements and other binding regulations with respect to use, maintenance and operation of the Locomotives during this lease. The Lessee shall use the Locomotives only in the manner for which designed and intended and so as to subject them only to ordinary wear and tear.

Except for repair or replacement that is the Lessor's responsibility under Section 3 above and provided that the Locomotives are not being maintained pursuant to the terms and conditions of the Maintenance Agreement dated as of December 12, 1989 between Lessor and Lessee, Lessee shall, at its own cost and expense, maintain and service the Locomotives in accordance with prudent industry practice including testing and repair of the Locomotives so that the Locomotives will remain (a) in as good

operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) suitable for immediate use by a line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of resale or release upon default by the Lessee. In no event shall the locomotives be maintained or scheduled for maintenance on a basis less frequent than the maintenance or maintenance scheduling basis employed as of the date hereof by the Lessee for similar equipment. Any parts installed or replacements made by Lessee upon the Locomotives shall be considered accessions to the Locomotives and title thereto shall be immediately vested in Lessor, without cost or expense to Lessor; provided, however, Lessee may remove from the Locomotives any (a) communications equipment, (b) train control, (c) end of train telemetry, and (d) recording devices, which Lessee paid for and installed but only if such removal may be accomplished without damage to the Locomotives.

9. Assignment by Lessee: 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 the Lessee's under standard run through arrangements and horsepower hour exchanges; provided, however, that a Locomotive may not be so operated or used outside the 48 contiguous

states of the United States. Notwithstanding any assignment or sublet as provided in this paragraph, Lessee shall not be relieved of its obligations under this Lease.

10. Assignment by Lessor: Lessor shall not assign its rights and obligations under this Lease without notice to or prior consent of Lessee.

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

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

G. W. Dodd, Sr. Vice President - Finance
The Atchison, Topeka and Santa Fe Railway Company
80 East Jackson Boulevard
Chicago, Illinois 60604

or to such other address as Lessee may from time to time indicate by written notice to Lessor.

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

Electro-Motive Division
General Motors Corporation
LaGrange, Illinois 60525
Attention: Manager of Domestic Finance and Leasing

12. Quiet Enjoyment: So long as Lessee makes its aforesaid rental payments and otherwise complies with the terms and provisions hereof, Lessee shall be entitled to the use and possession of the Locomotives according to the terms hereof without interference by the Lessor or by any party lawfully claiming by or through the Lessor.

13. 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.

14. Late Charges - Failure to Return Locomotives: Delinquent installments of rent shall bear interest at the rate of 1% per month if not prohibited by law.

15. Protection of Lessor's Title: Lessor may, at its option, cause this lease to be duly filed, registered or recorded in conformity with the Interstate Commerce Commission, 49 USC Section 11303, 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 other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister, or rerecord whenever required) any and all further instruments required by law or reasonably requested by Lessor, for the purpose of protecting Lessor's title to the

Locomotive to the satisfaction of Lessor's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to Lessor proof of such filing.

16. 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 a sale to Lessee, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Locomotive including without limitation amounts payable under Sections 2, 6 and 9, hereof and other taxes (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 Locomotive and whether or not the same shall be assessed against or in the name of Lessor or Lessee.

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

18. Further Assurance: Lessee shall execute and deliver to Lessor, upon Lessor's request such instruments and assurances as Lessor deems necessary or advisable for the confirmation or perfection of this Lease and Lessor's right hereunder.

19. Lessee's Covenants: Lessee will: (a) defend at Lessee's own cost any action, proceeding or claim affecting the Locomotives; (b) do everything necessary or expedient to preserve or perfect the Lessor's interest in the Locomotives; (c) not misuse, fail to keep in good repair (ordinary wear and tear excepted), secrete, or, without the prior written consent of Lessor and notwithstanding Lessor's claim to proceeds, sell, rent, lend, encumber or transfer the Locomotives, except as provided in Subsection (e) of this section; (d) agree that Lessor may enter upon Lessee's premises or wherever the Locomotives may be located at any reasonable time and upon reasonable notice to inspect the Locomotives; and (e) except as provided in Section 10 of this Lease, not permit the use of the Locomotives by any other party, without the Lessor's consent to be granted in its sole discretion.

20. 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 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 15 days after written notice thereof to Lessee by Lessor, (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 of future statute, law or regulation or files an answer admitting the material allegations of a petition filed against it in any such proceeding, 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 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 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 and to become 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 the Lessee of any and all covenants of this Lease and to recover damages for the

breach thereof; (c) demand that Lessee deliver the Locomotive forthwith to Lessor at Lessee's expense at such place as Lessor may designate; and (d) Lessor and/or its agents may, without notice or liability or legal process, enter into any premises of or under control or jurisdiction of Lessee or any agent of Lessee where the locomotive may be or by Lessor is believed to be, and retake all or any item thereof, disconnecting and separating all thereof from any other property and using all force 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 the 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 the Lessor by such statute to prove for any amounts allowed 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 attorneys' fees.

The remedies in this Lease provided in favor of the 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. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such

waiver is not, at the time in question, prohibited by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf. The Lessor and the Lessee agree that the Lessor shall be entitled to all rights (such rights being fundamental to the willingness of the Lessor to enter into this Lease) provided for in the Bankruptcy Code or of any other bankruptcy act, so that the Lessor shall have the right to take possession of the Locomotive upon any event of default under this Lease regardless of whether the Lessee is in reorganization. No failure by the Lessor to exercise, and no delay by the Lessor in exercising, any right, power or privilege hereunder shall operate as a waive thereof, nor shall any single or partial exercise of any right, power or privilege by the Lessor preclude any other or further exercise thereof, or the exercise of any other right, power or privilege.

21. Choice of Law: This Lease shall be governed in all respect by the Law of the State of Illinois.

22. Miscellaneous: Notwithstanding any of the terms and conditions set forth herein, if any of such terms and conditions are contrary to the provisions set forth in the Purchase Agreement - B effective as of December 22, 1989 between Lessor and Lessee, in the Maintenance Agreement dated as of December 22, 1989 between Lessor and Lessee or in the Labor Resources Agreement dated as of December 22, 1989 by and between Lessor and Lessee

(the "Other Agreements") then the provisions of such Other Agreements shall prevail. Each Locomotive shall be delivered to Lessee at Lessee's switch point at McCook, Illinois. If any part of this Lease 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. Lessee admits the receipt of a true copy of this Locomotive Lease Agreement.

Electro-Motive Division
General Motors Corporation

Attest: _____ By: _____

Title: Asst. Comptroller

The Atchison, Topeka &
Santa Fe Railway Company

Witness: _____ By: _____

Title: SR. VP-EXECUTIVE DEPT.

EXHIBIT A

Road Numbers

140
141
142
143
144
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148
149
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151
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EXHIBIT B

CERTIFICATE OF INSPECTION AND ACCEPTANCE

The undersigned, a duly authorized representative of The Atchison, Topeka and Santa Fe Railway Company (the "Railroad"), for the purpose of inspecting equipment that is to become subject to a Lease dated _____, between the Railroad and General Motors Corporation (Electro-Motive Division) (the "Lease"), and which is ultimately to become subject to permanent financing arrangements of the Railroad, hereby certifies that the following described unit or units of railroad equipment (the "Equipment"):

Description: GP60 3,800 H.P. Diesel Electric Locomotives

Manufacturer: General Motors Corporation (Electro-Motive Division)

Quantity:

Road Numbers:

Delivered at:

appear to be in good order and condition and to conform to the requirements and provisions of the Lease, and have been delivered to and have been inspected and accepted on behalf of the Railroad pursuant to the Lease as of the date indicated below.

The undersigned further certifies that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment the following legend, in letters not less than one inch in height:

OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION

The execution of this certificate shall not in any way reduce, limit, alter or affect the Railroad's right to pursue any claim, in warranty or otherwise, against the Manufacturer of the Equipment for any defect, whether latent or patent, nor does it abrogate the Manufacturer's obligation to cure any non-conforming equipment which is either knowingly or unknowingly accepted hereby.

_____
Authorized Representative of
The Atchison, Topeka and
Santa Fe Railway Company

Dated: _____

State of Illinois)
County of Cook) ss.

On this 11th day of July, 1990, before me personally appeared ~~P. Michael Smith~~ W. W. Werner, to me personally known, who, being by me duly sworn, did say that he is a Assistant Comptroller 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.

Agnes L. Hapke
Notary Public

"OFFICIAL SEAL"
Agnes L Hapke
Notary Public, State of Illinois
My Commission Expires 2/24/94

My commission expires:
2-24-94

State of ILLINOIS)
) ss.
County of COOK)

On this 11th day of JULY, 1990, before me personally appeared T. J. FITZGERALD, to me personally known, who, being by me duly sworn, did say that he is a SR-VP-EXECUTIVE DEPT. of The Atchison, Topeka and Santa Fe Railway 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.

Jean R. Fanjoy
Notary Public

My commission expires:
8/26/93

OFFICIAL SEAL
JEAN R FANJOY
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. AUG. 26,1993