

# WHITE & CASE

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(212) 354-8113

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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION 1-289A025

October 16, 1991

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REGISTRATION NO. FILED 103

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REGISTRATION NO. FILED 103

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Mr. Sidney L. Strickland, Jr.  
Secretary  
Interstate Commerce Commission  
Twelfth Street & Constitution Avenue, N.W.  
Washington, D.C. 20423

Re: Lease of Certain Locomotive and Railroad  
Cars from First Security Bank of Utah,  
National Association, to Burlington Northern  
Railroad Company

Dear Mr. Strickland:

Enclosed are an original and two originally executed counterparts of the two primary documents described below and the two secondary documents which also are described below. The secondary documents described as item 1 below is related to the primary document described as item 1 below. The secondary document described as item 2 below is related to the primary document described as item 2 below. All of the enclosed documents are to be recorded pursuant to Section 11303, Title 49, of the United States Code.

The enclosed primary documents are:

- (1) Equipment Lease Agreement dated as of October 1, 1991, between First Security Bank of Utah, National Association as lessor, and Burlington Northern Railroad Company, as lessee.
- (2) Trust Indenture and Security Agreement dated as of October 1, 1991, between First Security Bank of Utah, National Association, as owner

NOTICE OF RECEIPT  
OCT 16 1 40 PM '91

TIMOTHY MARTIN FOX  
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Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 2

trustee, and Wilmington Trust Company, as indenture trustee.

The enclosed secondary documents are:

(1) Lease Supplement No. 1 dated October 16, 1991, between First Security Bank of Utah, National Association, as lessor, and Burlington Northern Railroad Company, as lessee. The primary document to which this Lease Supplement is connected is being submitted for recording concurrently herewith.

(2) Trust Indenture Supplement No. 1 dated October 16, 1991, of First Security Bank of Utah, National Association, as owner trustee, and Wilmington Trust Company, as indenture trustee. The primary document to which this Indenture Supplement is connected is being submitted for recording concurrently herewith.

The names and addresses of the parties to the documents are as follows:

Equipment Lease Agreement

Lessor:  
First Security Bank of Utah, (1)  
National Association  
61 South Main Street  
Salt Lake City, Utah 84111

Lessee:  
Burlington Northern Railroad Company  
2900 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102

Lease Supplement No. 1

Lessor: (2)  
First Security Bank of Utah,  
National Association  
61 South Main Street

Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 3

Salt Lake City, Utah 84111

Lessee: <sup>(4)</sup>

Burlington Northern Railroad Company  
2900 Continental Plaza  
777 Main Street  
Fort Worth, Texas 76102

Trust Indenture and Security Agreement

Owner Trustee:  
First Security Bank of Utah, <sup>v Doc</sup>  
National Association  
61 South Main Street  
Salt Lake City, Utah 84111

Indenture Trustee:  
Wilmington Trust Company ✓  
Rodney Square North  
Wilmington, Delaware 19890

Trust Indenture Supplement No. 1 ✓

Owner Trustee:  
First Security Bank of Utah,  
National Association  
61 South Main Street  
Salt Lake City, Utah 84111

Indenture Trustee:  
Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890

The description of the equipment covered by the  
aforesaid Lease and Lease Supplement is as follows:

Fourteen SD60-M locomotives with reporting marks  
BN9250 through BN9263, both inclusive,

Twenty-three GP39-2 locomotives with reporting  
marks BN2759 through BN2761, BN2870 through  
BN2874 and BN2885 through BN2899, all inclusive,

Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 4

Two hundred forty aluminum gondola cars with reporting marks BN533641 through BN533880, both inclusive,

One hundred thirty sixty-five foot gondola cars with reporting marks BN580610 through BN580739, both inclusive,

Sixteen single double stack cars with reporting marks BN64003 through BN64018, both inclusive,

Thirty-one triple double stack cars with reporting marks BN64019 through BN64049, both inclusive.

Included in the property covered by the Trust Indenture and Security Agreement are (i) fourteen (14) SD60-M locomotives with reporting marks BN9250 through BN9263 both inclusive, twenty-three (23) GP39-2 locomotives with reporting marks BN2759 through BN2761, BN2870 through BN2874 and BN2885 through BN2899 all inclusive, two hundred forty (240) aluminum gondola cars with reporting marks BN533641 through BN533880 both inclusive, one hundred thirty (130) sixty-five foot gondola cars with reporting marks BN580610 through BN580739 both inclusive, sixteen (16) single double stack cars with reporting marks BN64003 through BN64018 both inclusive, thirty-one (31) triple double stack cars with reporting marks BN64019 through BN64049 both inclusive, and all additions, alterations and modifications thereto or replacements of any part thereof, whenever made or performed or acquired and all other items of tangible personal property of any kind acquired by First Security Bank of Utah, National Association, in connection with the acquisition of the aforementioned equipment, in each case whether acquired at the time of acquisition or thereafter acquired pursuant to the Lease or otherwise, (ii) certain rights of First Security Bank of Utah, National Association, in the Equipment Lease Agreement dated as of October 1, 1991, between First Security Bank of Utah, National Association, as lessor, and Burlington Northern Railroad Company, as lessee, (iii) all right, title and interest of First Security Bank of Utah, National Association, in and to all proceeds, rents, issues, profits, products, revenues and other income, from and on account of the property rights and privileges subjected or required to be subjected to the lien of the Trust Indenture and Security Agreement.

Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 5

A fee of Sixty-eight dollars (\$68.00) is enclosed. Please return the original and any extra copies not needed by the Commission for recordation to:

Christopher G. Wilkinson  
White & Case  
1155 Avenue of the Americas  
New York, New York 10036

A short summary of each of the documents to appear in the index follows:

1) Equipment Lease Agreement:

Equipment Lease Agreement dated as of October 1, 1991, between First Security Bank of Utah, National Association, as lessor, 61 South Main Street, Salt Lake City, Utah 84111, and Burlington Northern Railroad Company, as lessee, 2900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, covering fourteen (14) SD60-M locomotives with reporting marks BN9250 through BN9263 both inclusive, twenty-three (23) GP39-2 locomotives with reporting marks BN2759 through BN2761, BN2870 through BN2874 and BN2885 through BN2899 all inclusive, two hundred forty (240) aluminum gondola cars with reporting marks BN533641 through BN533880 both inclusive, one hundred thirty (130) sixty-five foot gondola cars with reporting marks BN580610 through BN580739 both inclusive, sixteen (16) single double stack cars with reporting marks BN64003 through BN64018 both inclusive, thirty-one (31) triple double stack cars with reporting marks BN64019 through BN64049 both inclusive.

2) Lease Supplement No. 1:

Lease Supplement No. 1 dated October 16, 1991, between First Security Bank of Utah, National Association, as lessor, 61 South Main Street, Salt Lake City, Utah 84111, and Burlington Northern Railroad Company, as lessee, 2900 Continental Plaza, 777 Main

Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 6

Street, Forth Worth, Texas 76102, covering fourteen (14) SD60-M locomotives with reporting marks BN9250 through BN9263 both inclusive, twenty-three (23) GP39-2 locomotives with reporting marks BN2759 through BN2761, BN2870 through BN2874 and BN2885 through BN2899 all inclusive, two hundred forty (240) aluminum gondola cars with reporting marks BN533641 through BN533880 both inclusive, one hundred thirty (130) sixty-five foot gondola cars with reporting marks BN580610 through BN580739 both inclusive, sixteen (16) single double stack cars with reporting marks BN64003 through BN64018 both inclusive, thirty-one (31) triple double stack cars with reporting marks BN64019 through BN64049 both inclusive.

3) Trust Indenture and Security Agreement:

Trust Indenture and Security Agreement dated as of October 1, 1991, between First Security Bank of Utah, National Association, as lessor, 61 South Main Street, Salt Lake City, Utah 84111, and Burlington Northern Railroad Company, as lessee, 2900 Continental Plaza, 777 Main Street, Forth Worth, Texas 76102, covering fourteen (14) SD60-M locomotives with reporting marks BN9250 through BN9263 both inclusive, twenty-three (23) GP39-2 locomotives with reporting marks BN2759 through BN2761, BN2870 through BN2874 and BN2885 through BN2899 all inclusive, two hundred forty (240) aluminum gondola cars with reporting marks BN533641 through BN533880 both inclusive, one hundred thirty (130) sixty-five foot gondola cars with reporting marks BN580610 through BN580739 both inclusive, sixteen (16) single double stack cars with reporting marks BN64003 through BN64018 both inclusive, thirty-one (31) triple double stack cars with reporting marks BN64019 through BN64049 both inclusive.

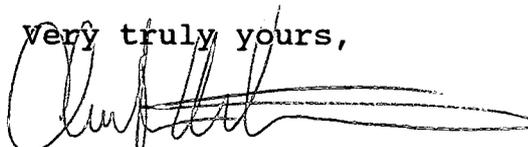
Mr. Sidney L. Strickland, Jr.  
October 16, 1991  
Page 7

4) Trust Indenture Supplement No. 1:

Trust Indenture Supplement No. 1 dated October 16, 1991, between First Security Bank of Utah, National Association, as lessor, 61 South Main Street, Salt Lake City, Utah 84111, and Burlington Northern Railroad Company, as lessee, 2900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102, covering fourteen (14) SD60-M locomotives with reporting marks BN9250 through BN9263 both inclusive, twenty-three (23) GP39-2 locomotives with reporting marks BN2759 through BN2761, BN2870 through BN2874 and BN2885 through BN2899 all inclusive, two hundred forty (240) aluminum gondola cars with reporting marks BN533641 through BN533880 both inclusive, one hundred thirty (130) sixty-five foot gondola cars with reporting marks BN580610 through BN580739 both inclusive, sixteen (16) single double stack cars with reporting marks BN64003 through BN64018 both inclusive, thirty-one (31) triple double stack cars with reporting marks BN64019 through BN64049 both inclusive.

If you have any questions, please do not hesitate to call the undersigned.

Very truly yours,



Christopher Wilkinson

Interstate Commerce Commission  
Washington, D.C. 20423

10/16/91

OFFICE OF THE SECRETARY

Christopher Wilkinson

White & Case

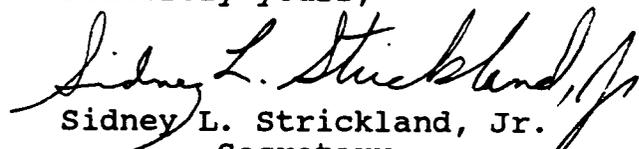
1155 Avenue Of The Americas

New York, N.Y. 10036

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 10/16/91 at 1:45pm, and assigned recordation number(s). 17562, 17562-A, 17562-B & 17562-C

Sincerely yours,

  
Sidney L. Strickland, Jr.  
Secretary

EQUIPMENT LEASE AGREEMENT

Dated as of October 1, 1991

17562  
REC'D

OCT 16 1991 4 22 PM

Between  
FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION,  
not in its individual capacity except  
as expressly provided herein but  
solely as Owner Trustee,

Lessor

and

BURLINGTON NORTHERN RAILROAD COMPANY,

Lessee

- 14 SD60-M Locomotives
- 23 GP39-2 Locomotives
- 240 Aluminum Gondola Cars
- 130 65' Gondola Cars
- 16 Single Double Stack Cars
- 31 Triple Double Stack Cars

CERTAIN OF THE RIGHT, TITLE AND INTEREST OF LESSOR IN AND TO THIS LEASE, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE HEREUNDER HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, WILMINGTON TRUST COMPANY, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE AND SECURITY AGREEMENT, DATED AS OF OCTOBER 1, 1991 BETWEEN SAID INDENTURE TRUSTEE, AS SECURED PARTY, AND LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE INDENTURE TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THIS LEASE. TO THE EXTENT, IF ANY, THAT THIS LEASE AGREEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST COMPANY, AS INDENTURE TRUSTEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF. SEE SECTION 26.2 FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on \_\_\_\_\_ at \_\_\_\_\_ P.M. Recordation Number \_\_\_\_\_, and deposited in the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on \_\_\_\_\_, at \_\_\_\_\_ A.M.

TABLE OF CONTENTS

	<u>Page</u>
Parties . . . . .	1
1. Definitions . . . . .	1
2. Acceptance and Leasing of Equipment . . . . .	1
3. Term and Rent . . . . .	2
3.1 Lease Term . . . . .	2
3.2 Basic Rent . . . . .	2
3.3 Supplemental Rent . . . . .	2
3.4 Adjustment of Rent . . . . .	3
3.5 Advances . . . . .	3
3.6 Manner of Payments . . . . .	4
4. Ownership and Marking of Equipment . . . . .	5
4.1 Retention of Title . . . . .	5
4.2 Duty to Number and Mark Equipment . . . . .	5
4.3 Prohibition against Certain Designations . . . . .	6
5. Disclaimer of Warranties; Right of Quiet Enjoyment . . . . .	6
5.1 Disclaimer of Warranties . . . . .	6
5.2 Quiet Enjoyment . . . . .	7
6. Return of Equipment; Storage . . . . .	7
6.1 General . . . . .	7
6.2 Condition of Equipment . . . . .	8
6.3 Storage . . . . .	8
7. Liens . . . . .	9
8. Maintenance; Operation; Possession; Compliance with Laws . . . . .	9

	<u>Page</u>
8.1 Maintenance . . . . .	9
8.2 Possession . . . . .	10
8.3 Sublease . . . . .	10
9. Modifications . . . . .	11
9.1 Required Modifications . . . . .	11
9.2 Optional Modifications . . . . .	11
9.3 Removal of Proprietary and Communications Equipment . . . . .	12
10. Voluntary Termination . . . . .	12
10.1 Right of Termination . . . . .	12
10.2 Sale of Equipment . . . . .	13
10.3 Retention of Equipment by Lessor . . . . .	14
10.4 Termination of Lease . . . . .	15
11. Loss, Destruction, Requisition, Etc. . . . .	15
11.1 Event of Loss . . . . .	15
11.2 Replacement or Payment upon Event of Loss.	16
11.3 Rent Termination . . . . .	17
11.4 Disposition of Equipment; Replacement of Unit . . . . .	17
11.5 Eminent Domain . . . . .	18
12. Insurance . . . . .	19
12.1 Property Damage and Public Liability Insurance . . . . .	19
12.2 Proceeds of Insurance . . . . .	20
12.3 Additional Insurance . . . . .	20
13. Reports; Inspection . . . . .	20
13.1 Duty of Lessee to Furnish . . . . .	21
13.2 Lessor's Inspection Rights . . . . .	21
14. Events of Default . . . . .	22
15. Remedies . . . . .	24
15.1 Remedies . . . . .	24
15.2 Cumulative Remedies . . . . .	27
15.3 No Waiver . . . . .	27

	<u>Page</u>
16. Filings; Further Assurances . . . . .	27
16.1 Filings . . . . .	27
16.2 Additional Filings . . . . .	28
16.3 Further Assurances . . . . .	28
16.4 Expenses . . . . .	29
17. Lessor's Right to Perform . . . . .	29
18. Assignment . . . . .	29
18.1 Assignment by Lessor . . . . .	29
18.2 Assignment by Lessee . . . . .	30
18.3 Sublessee's Performance and Rights . . . . .	30
19. Net Lease, Etc. . . . .	30
20. Notices . . . . .	31
21. Concerning the Indenture Trustee . . . . .	32
21.1 Limitation of Indenture Trustee's Liabilities . . . . .	32
21.2 Right, Title and Interest of Indenture Trustee under Lease . . . . .	33
22. Termination upon Purchase by Purchase Option Holder; Options to Renew . . . . .	33
22.1 Termination upon Purchase by Purchase Option Holder . . . . .	33
22.2 Renewal Option at Expiration of Basic Term or Renewal Term . . . . .	33
22.3 Lessee's Notice . . . . .	34
22.4 Determination of Fair Market Rental Value . . . . .	35
22.5 Stipulated Loss Value During Renewal Term . . . . .	35
23. Limitation of Lessor's Liability . . . . .	35
24. Lessee's Right of Set-Off . . . . .	35
25. Investment of Security Funds . . . . .	36

	<u>Page</u>
26. Miscellaneous . . . . .	36
26.1 Governing Law; Severability . . . . .	36
26.2 Execution in Counterparts . . . . .	37
26.3 Headings and Table of Contents; Section References . . . . .	37
26.4 Successors and Assigns . . . . .	37
26.5 True Lease . . . . .	37
26.6 Amendments and Waivers . . . . .	38
26.7 Survival . . . . .	38
26.8 Business Days . . . . .	38
26.9 Directly or Indirectly . . . . .	38

Attachments to Equipment Lease:

- Exhibit A        Form of Lease Supplement
- Appendix A     Definitions

## EQUIPMENT LEASE AGREEMENT

This EQUIPMENT LEASE AGREEMENT, dated as of October 1, 1991 (this "Lease"), between First Security Bank of Utah, National Association, a national banking association, not in its individual capacity except as expressly provided herein, but solely as Owner Trustee under the Trust Agreement ("Lessor"), and Burlington Northern Railroad Company, a Delaware corporation ("Lessee").

### W I T N E S S E T H :

#### Section 1. Definitions.

Unless the context otherwise requires, all capitalized terms used herein without definition shall have the respective meanings set forth in Appendix A hereto for all purposes of this Lease.

#### Section 2. Acceptance and Leasing of Equipment.

Lessor hereby agrees (subject to satisfaction or waiver of the conditions set forth in Section 4.1 of the Participation Agreement), simultaneously with the delivery of legal title to each Unit from Vendor to Lessor and acceptance thereof by Lessor, to accept delivery of each such Unit from Vendor, as evidenced by the execution and delivery by Lessor and Lessee of a Certificate of Acceptance with respect to each such Unit and thereafter to lease each such Unit to Lessee hereunder, and Lessee hereby agrees (subject to satisfaction or waiver of the conditions set forth in Section 4.4 of the Participation Agreement) to lease from Lessor hereunder, each such Unit, as evidenced by the execution and delivery by Lessee and Lessor of a Lease Supplement covering each such Unit. Lessor hereby authorizes one or more employees of Lessee, designated by Lessee, to act on behalf of Lessor as its authorized representative or representatives, to accept delivery of the Equipment, to execute and deliver such Certificate of Acceptance, all in accordance with Section 2.3(b) of the Participation Agreement. Lessee hereby agrees that such acceptance of delivery by such authorized representative or representatives on behalf

of Lessor shall, without further act, irrevocably constitute acceptance by Lessee of each such Unit for all purposes of this Lease.

Section 3. Term and Rent.

3.1 Lease Term. The interim term of this Lease (the "Interim Term") for each Unit shall commence on the Closing Date with respect to such Unit and shall terminate one day before the Basic Term Commencement Date. The basic term of this Lease (the "Basic Term") shall commence on the Basic Term Commencement Date and, subject to earlier termination pursuant to Sections 10, 11, 15, and 22.1, shall expire at 11:59 P.M. (Chicago time) on the Basic Term Expiration Date. Subject and pursuant to Section 22.2, the Lessee may elect one or more Renewal Terms with respect to any Unit.

3.2 Basic Rent. Lessee hereby agrees to pay Lessor Basic Rent for each Unit throughout the Basic Term applicable thereto in consecutive semi-annual installments payable on each Rent Payment Date. Each such payment of Basic Rent shall be in an amount equal to the product of the Equipment Cost for such Unit multiplied by the Basic Rent percentage for such Unit set forth opposite such Rent Payment Date on Schedule 3 to the Participation Agreement (as such Schedule 3 shall be adjusted pursuant to Section 2.6 of the Participation Agreement). Basic Rent shall be payable in advance on certain Rent Payment Dates and in arrears on certain Rent Payment Dates, as specified in Schedule 3 to the Participation Agreement, as so adjusted (such Schedule 3 as so adjusted from time to time being incorporated herein by reference).

Anything contained herein or in the Participation Agreement to the contrary notwithstanding, each installment of Basic Rent (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement) shall be, under any circumstances and in any event, in an amount at least sufficient for Lessor to pay in full as of the due date of such installment, any payment of principal of and interest on the Secured Equipment Notes required to be paid by Lessor pursuant to the Indenture on such due date.

3.3 Supplemental Rent. Lessee also agrees to pay to Lessor, or to whomsoever shall be entitled thereto, any and all Supplemental Rent, promptly as the same shall become due and owing, or where no due date is specified, promptly after demand by the Person entitled thereto, and in the

event of any failure on the part of Lessee to pay any Supplemental Rent, Lessor shall have all rights, powers and remedies provided for herein or by law or equity or otherwise as in the case of nonpayment of Basic Rent. Lessee will also pay (i) on demand, as Supplemental Rent, to the extent permitted by applicable law, an amount equal to interest at the applicable Late Rate on any part of any installment of Basic Rent not paid when due for any period for which the same shall be overdue and on any payment of Supplemental Rent not paid when due or demanded, as the case may be, for the period from such due date or demand until the same shall be paid, (ii) in the case of the termination of this Lease with respect to any Unit pursuant to Section 10, on the applicable Termination Date, an amount equal to the Make-Whole Amount, if any, with respect to the principal amount of each Secured Equipment Note to be prepaid as a result of such termination, and (iii) in the case of the termination of this Lease with respect to any Unit pursuant to Section 22.1, on the date such Unit is purchased, an amount equal to the Make-Whole Amount, if any, with respect to any Secured Equipment Note to be prepaid on such date. All Supplemental Rent to be paid pursuant to this Section 3.3 shall be payable in the type of funds and in the manner set forth in Section 3.6.

3.4 Adjustment of Rent. Lessee and Lessor agree that the Basic Rent, Stipulated Loss Value and Termination Value percentages shall be adjusted to the extent provided in Section 2.6 of the Participation Agreement.

3.5 Advances. Lessor agrees to give notice to Lessee and the Indenture Trustee at least five Business Days prior to the Basic Term Commencement Date if the funds for the payment required to be made by the Owner Trustee pursuant to Section 2.2(b) of the Participation Agreement will not be paid by the Owner Trustee to the Indenture Trustee in an amount equal to the amount required to be paid pursuant to Section 2.2(b) of the Participation Agreement. If and to the extent that the Indenture Trustee on the Basic Term Commencement Date shall not have received funds from the Owner Trustee sufficient for the payment in full of the amounts then due and owing on the Secured Equipment Notes, Lessee shall pay as Supplemental Rent, in one installment due on the Basic Term Commencement Date, an amount, if any, equal to such deficiency (such payment being referred to herein as an "Advance"). In the event Lessee makes any Advance pursuant to this Section 3.5 and is not promptly reimbursed therefor by the Owner Participant, Lessee shall be entitled to offset and deduct (without duplication)

against each succeeding payment or portion thereof of Basic Rent, Supplemental Rent, Stipulated Loss Value, Termination Value or any other amount due from Lessee to Persons other than the holders of the Secured Equipment Notes, the Indenture Trustee, and the Owner Trustee in its individual capacity, an amount equal to such Advance plus interest on such amount and interest on interest, to the extent permitted by law, at the Overdue Rate until Lessee has been fully reimbursed for such Advance plus such interest and in each such case, such offset shall be deemed to constitute a reduction in the amount of such Advance so payable. No such offset or aggregate combined effect of separate offsets shall reduce the amount of any installment of Basic Rent to an amount that is insufficient to pay in full the payments then required to be made on account of the principal and interest on the Secured Equipment Notes then outstanding.

3.6 Manner of Payments. All Rent (other than Supplemental Rent payable to Persons other than Lessor, which shall be payable to such other Persons in accordance with written instructions furnished to Lessee by such Persons, as otherwise provided in any of the Operative Agreements or as required by law) shall be paid by Lessee to Lessor at its office at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Corporate Trust Department, Fax No.: (801) 350-5053 and Confirmation No.: (801) 350-5630. All Rent shall be paid by Lessee in funds consisting of lawful currency of the United States of America, which shall be immediately available to the recipient not later than 11:30 a.m. (New York City time) on the Rent Payment Date on which such Rent is due; provided that if any payment of Rent is not made available to the recipient by 11:30 a.m. (New York City time) on the Rent Payment Date on which such Rent is due and the Vendor shall not have received on such date the payment of principal of and interest due under the Secured Equipment Note or Secured Equipment Notes, then such payment shall be deemed to have been made on the next succeeding Business Day on which such payment of Rent is available to the recipient by 11:30 a.m. (New York City time), and Lessee shall pay Supplemental Rent in respect thereof in accordance with Section 3.3; provided, further that so long as the Indenture shall not have been discharged pursuant to the terms thereof, Lessor hereby directs, and Lessee irrevocably agrees, that all Rent (excluding Excepted Property) payable to Lessor and assigned to the Indenture Trustee shall be paid directly to the Indenture Trustee at the times and in funds of the type specified in this Section 3.6 at the office of the Indenture Trustee set forth in

Section 11.4 of the Participation Agreement, or at such other location in the United States of America as the Indenture Trustee may otherwise direct.

Section 4. Ownership and Marking of Equipment.

4.1 Retention of Title. Lessor, as between Lessor and Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery of the Equipment to Lessee hereunder.

4.2 Duty to Number and Mark Equipment. As soon as practicable after the Closing Date but in no event later than December 31, 1991, Lessee will cause each Unit to be numbered with its reporting mark shown on the Lease Supplement dated the Closing Date on which such Unit was delivered and covering such Unit, and will from and after such date keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting colors upon each side of each Unit, in letters not less than one inch in height, a legend substantially as follows:

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

OR

"SUBJECT TO A SECURITY AGREEMENT RECORDED  
WITH THE INTERSTATE COMMERCE COMMISSION"

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect Lessor's right, title and interest in and to such Unit, its rights under this Lease and the rights of the Indenture Trustee. Except as provided hereinabove, Lessee will not place any such Units in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof, and will replace promptly any such word or words in such legend which may be removed, defaced, obliterated or destroyed. Lessee will not change the reporting mark of any Unit except in accordance with a statement of new reporting marks to be substituted therefor, which statement shall be delivered to Lessor by Lessee and a supplement to this Lease and the Indenture with respect to such new reporting marks shall be filed or recorded in all public offices where this Lease and the Indenture shall have been filed or recorded.

4.3 Prohibition against Certain Designations. Except as above provided, Lessee will not allow the name of any Person to be placed on any Unit as a designation that might reasonably be interpreted as a claim of ownership; provided, however, that Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by Lessee or any permitted sublessees or any of their respective Affiliates on railroad equipment used by it of the same or a similar type.

Section 5. Disclaimer of Warranties; Right of Quiet Enjoyment.

5.1 Disclaimer of Warranties. LESSEE ACKNOWLEDGES AND AGREES FOR THE BENEFIT OF THE TRUSTEES, THE OWNER PARTICIPANT AND THE VENDOR THAT, (i) EACH UNIT IS OF A SIZE, DESIGN, CAPACITY AND MANUFACTURE SELECTED BY AND ACCEPTABLE TO LESSEE, (ii) LESSEE IS SATISFIED THAT EACH UNIT IS SUITABLE FOR ITS PURPOSES, (iii) LESSOR IS NOT A MANUFACTURER OR A DEALER IN PROPERTY OF SUCH KIND, (iv) EACH UNIT IS LEASED HEREUNDER SUBJECT TO ALL APPLICABLE LAWS AND GOVERNMENTAL REGULATIONS NOW IN EFFECT OR HEREAFTER ADOPTED AND (v) LESSOR LEASES AND LESSEE TAKES EACH UNIT "AS-IS", "WHERE-IS" AND "WITH ALL FAULTS", AND LESSEE ACKNOWLEDGES THAT NEITHER LESSOR, AS LESSOR OR IN ITS INDIVIDUAL CAPACITY, NOR THE OWNER PARTICIPANT MAKES NOR SHALL BE DEEMED TO HAVE MADE, AND EACH EXPRESSLY DISCLAIMS, ANY AND ALL RIGHTS, CLAIMS, WARRANTIES OR REPRESENTATIONS EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, DESIGN, OPERATION, MERCHANTABILITY THEREOF OR AS TO THE TITLE OF THE EQUIPMENT, THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREOF OR CONFORMITY THEREOF TO SPECIFICATIONS, FREEDOM FROM PATENT, COPYRIGHT OR TRADEMARK INFRINGEMENT, THE ABSENCE OF ANY LATENT OR OTHER DEFECT, WHETHER OR NOT DISCOVERABLE, OR AS TO THE ABSENCE OF ANY OBLIGATIONS BASED ON STRICT LIABILITY IN TORT OR ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER WITH RESPECT THERETO, except that Lessor, in its individual capacity, represents and warrants that on the Closing Date, Lessor shall have received whatever title to the Equipment as was conveyed to Lessor by Vendor and each Unit will be free of Lessor's Liens attributable to Lessor in its individual capacity. During the Lease Term so long as no Event of Default shall have occurred and be continuing, Lessor hereby appoints and constitutes Lessee its agent and attorney-in-fact during the Lease Term to assert and enforce, from time to time, in the name of Lessor and Lessee, as their interests may appear, but in all cases at

the sole cost and expense of Lessee, whatever claims and rights Lessor may have as owner of the Equipment against the manufacturers or any prior owner thereof.

5.2 Quiet Enjoyment. Each party to this Agreement acknowledges notice of, and consents in all respects to, the terms of this Lease, and expressly, agrees that, notwithstanding any other provision of any of the Operative Agreements, so long as no Lease Event of Default has occurred and is continuing, it shall not take or cause to be taken any action contrary to Lessee's rights under this Lease or otherwise through its own actions or inactions in any way interfere with or interrupt the quiet enjoyment of the use, operation and possession of any Unit by the Lessee or any sublessee, assignee or transferee under any sublease, assignment or transfer then in effect and permitted by the terms of the Lease.

Section 6. Return of Equipment; Storage.

6.1 General.

(a) As soon as practicable on or after the expiration of the Lease Term with respect to any Unit which has not been purchased by the Purchase Option Holder, Lessee will, at its own cost and expense, deliver possession of such Unit to Lessor at any interchange point on the tracks of Lessee, f.o.b. such interchange point, as Lessor may reasonably designate to Lessee in writing at least 90 days before the end of the Lease Term, or, in the absence of such designation, as Lessee may select or, if Lessor has requested storage pursuant to Section 6.3, to the location determined in accordance with Section 6.3. Upon expiration of the Lease Term with respect to such Unit, compliance with the redelivery terms hereof and tender of such Unit at the location determined in accordance with this Section 6.1(a), this Lease and the obligation to pay Basic Rent and all other Rent for such Unit accruing subsequent to the expiration of the Lease Term with respect to such Unit shall terminate.

(b) In the event any Unit is not returned as hereinabove provided as a result of any action or inaction on the part of Lessee within 30 days after the expiration of the Lease Term with respect to such Unit, Lessee shall pay to Lessor, for each day thereafter as liquidated damages, and not as a penalty, for the failure of Lessee to return such Unit to Lessor at the expiration of the Lease Term as required by the provisions of Section 6.1(a), an amount

equal to the daily equivalent of the arithmetic average of the Basic Rent during the Basic Term for such Unit or, if the failure to return occurs after a Renewal Term, the arithmetic average of the rent paid during the Renewal Term for such Unit. The provision for such payment shall not be in abrogation of Lessor's right under Section 6.1(a) to have such Unit returned to it hereunder.

6.2 Condition of Equipment. Each Unit when returned to Lessor pursuant to Section 6.1(a) shall be (i) capable of performing the functions for which it was designed, (ii) free from excessive accumulations or deposits from the commodities transported in or on the Unit during the Lease Term and (iii) in the condition required by Section 8.1.

6.3 Storage. Upon the expiration of the Lease Term with respect to each Unit, upon written request of Lessor received at least 90 days prior to the end of the Lease Term, Lessee shall permit Lessor to store such Unit, free of charge, except as provided below, at such location on the tracks of Lessee used by Lessee for the storage of surplus rolling stock or rolling stock available for sale as shall be reasonably designated by Lessor (taking into account, among other things, Lessee's storage capacity, security and access) in its request for storage pursuant to this Section 6.3 for a period (the "Storage Period") beginning on the expiration of the Lease Term and ending not more than 30 days after the later of the expiration of the Lease Term with respect to such Units or the date on which 50% of all Units to be returned at the expiration of the Lease Term have been returned. Any storage facilities provided by Lessee pursuant to this Section 6.3 shall, in all cases, be at the cost to Lessor of insurance and Lessee's out-of-pocket costs in connection with providing any services not contemplated hereby to be provided during the Storage Period and at the sole risk of Lessor. On not more than one occasion during the Storage Period with respect to each stored Unit and upon not less than 15 days' prior written notice from Lessor to Lessee (which notice shall specify the transportation of all or not less than 30 Units), Lessee will transport such Units, at Lessee's cost and expense, to a destination or interchange point, f.o.b. such destination or interchange point, on the Lessee's lines specified by the Lessor whereupon Lessee shall have no further liability or obligation with respect to such Units. During the Storage Period, Lessee will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit,

to inspect the same; provided, however, that such inspection shall not interfere with the normal conduct of Lessee's business, such person shall be insured to the reasonable satisfaction of Lessee with respect to any risks incurred in connection with any such inspections and Lessee shall not be liable for any injury to, or the death of, any person exercising, either on behalf of Lessor or any prospective purchaser or user, the rights of inspection granted pursuant hereto. Lessee shall not be required to store the Equipment after the Storage Period. If Lessee stores any Unit after the Storage Period, such storage shall be at the sole expense and risk of Lessor.

#### Section 7. Liens.

Lessee will not directly or indirectly create, incur, assume or suffer to exist any Lien on or with respect to any Units or Lessee's leasehold interest therein under this Lease, except Permitted Liens, and Lessee shall promptly, at its own expense, take such action as may be necessary to duly discharge (by bonding or otherwise) any such Lien not excepted above if the same shall arise at any time. Lessee shall protect, save and keep harmless the Owner Trustee, the Vendor, Lessor, the Owner Participant and the Indenture Trustee (referred to in this Section as the "Indemnitees") and their respective successors and assigns from and against any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable attorneys' fees) of whatsoever kind and nature that may be imposed on, incurred by or asserted at any time (whether before, during or after the Lease Term) against such Indemnitees in any way relating to or arising out of any such Lien except Permitted Liens, Lessor's Liens or liens created by the Indenture Trustee pursuant to Section 6.4 of the Participation Agreement.

#### Section 8. Maintenance; Operation; Possession; Compliance with Laws.

8.1 Maintenance. Lessee, at its own cost and expense, shall maintain and keep each Unit, in all material respects, (i) in accordance with prudent Class I railroad industry maintenance practices in existence from time to time, (ii) in a manner consistent with maintenance practices used by Lessee in respect of equipment owned or leased by Lessee similar in type to such Unit, and (iii) in compliance with all applicable laws and regulations, including any applicable Interchange Rules, as applicable to continued use

by Lessee; provided, however, that Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially adversely affect the rights or interests of Lessor and the Indenture Trustee in the Equipment or hereunder or otherwise expose Lessor, the Indenture Trustee, the Owner Participant or the Vendor to criminal sanctions.

8.2 Possession. Lessee shall be entitled to the possession of the Equipment and to the use of the Equipment by it or any Affiliate upon lines of railroad owned or operated by it or any such Affiliate, upon lines of railroad over which Lessee or any such Affiliate has trackage or other operating rights or over which railroad equipment of Lessee or any such Affiliate is regularly operated pursuant to contract, in connection with barge-related rail transportation and on railroad lines of other railroads in the United States, Canada and Mexico, in the usual interchange of traffic or in through or run-through service and shall be entitled to permit the use of such Unit upon connecting and other carriers in the usual interchange of traffic or pursuant to through or run-through agreements.

8.3 Sublease. So long as no Event of Default shall have occurred and be continuing, Lessee shall have the right to sublease any Unit to or permit its use by a user incorporated under the federal laws or the laws of any state of the United States, organized under the federal laws or the laws of any province of Canada or organized under the federal laws or the laws of any state of Mexico, which sublease shall be subject and subordinate to this Lease and to the Liens under the Indenture. In connection with any sublease or use of any Unit outside the United States pursuant to Section 8.2 or this Section 8.3, Lessee agrees to promptly notify in writing the Indenture Trustee, the Owner Participant, the Owner Trustee and the Vendor of any condition (including, without limitation, any lawsuit, judgment or order affecting such Unit or any change in law, rule, regulation, or order) which could have a material and adverse effect on the rights and security interest of the Indenture Trustee in the Equipment or the interest of the Lessor and the Owner Participant in and to the Equipment, and Lessee agrees to take all actions reasonably requested by the Indenture Trustee, the Owner Participant, the Owner Trustee or the Vendor to protect such rights and security interest of the Indenture Trustee in the Equipment or the interest of the Lessor and the Owner Participant in and to the Equipment. No sublease shall in any way discharge or

diminish any of Lessee's obligations hereunder, and Lessee shall remain primarily liable hereunder for the performance of all the terms, conditions and provisions of this Lease and the other Lessee Agreements to the same extent as if such sublease had not been entered into.

Section 9. Modifications.

9.1 Required Modifications. In the event the Association of American Railroads, the United States Department of Transportation, or any other United States governmental agency having jurisdiction over the operation, safety or use of railroad equipment requires that any Unit be altered, replaced or modified (a "Required Modification"), Lessee agrees to make such Required Modification at its own expense; provided, however, that Lessee may, in good faith and by appropriate proceedings diligently conducted, contest the validity or application of any such law, regulation, requirement or rule in any reasonable manner which does not materially adversely affect the rights or interests of Lessor and the Indenture Trustee in the Equipment or hereunder or otherwise expose Lessor, the Indenture Trustee, Owner Participant or Vendor to criminal sanctions. Subject to Section 9.3, title to any Required Modification shall immediately vest in Lessor. Notwithstanding anything herein to the contrary, if Lessee determines in good faith that any Required Modification to a Unit would be economically impractical, it shall provide written notice of such determination to Lessor and the parties hereto shall treat such Unit as if an Event of Loss had occurred as of the date of such written notice with respect to such Unit. In any such event, on or before the Business Day next preceding the 121st day next following the date of notice of such determination, Lessee shall pay or cause to be paid to Lessor or, in the case of Supplemental Rent, to the Persons entitled thereto, in funds of the type specified in Section 3.6, (A) an amount equal to the Stipulated Loss Value of each such Unit as of the date of payment, (B) if such date of payment is a Rent Payment Date, all Basic Rent payable on such date in respect of such Unit, (C) the Make-Whole Amount, if any, and (D) all Supplemental Rent then due and payable in respect of such Unit and the provisions of Sections 11.2, 11.3 and 11.4 with respect to termination and disposition shall apply with respect to such Unit.

9.2 Optional Modifications. Lessee at any time may modify, alter or improve any Unit (a "Modification"); provided that no Modification shall materially diminish the fair market value or utility of such Unit below the value or

utility thereof immediately prior to such Modification, assuming such Unit was then in the condition required to be maintained by the terms of this Lease. Title to any Non-Severable Modifications shall be immediately vested in Lessor. Title to any Severable Modifications which are not required by Section 9.1 hereof shall remain with Lessee. If Lessee shall at its cost cause such Severable Modifications to be made to any Unit and such Severable Modifications are reasonably necessary for the economic operation of any such Unit, Lessor shall have the right, prior to the return of such Unit to Lessor hereunder, to purchase such Severable Modifications (other than Severable Modifications consisting of proprietary or communications equipment) at their then Fair Market Sales Value. If Lessor does not elect to purchase such Severable Modifications, Lessee may remove such Severable Modifications at Lessee's cost and expense.

9.3 Removal of Proprietary and Communications Equipment. Notwithstanding anything to the contrary contained herein, Lessee shall at all times own and be entitled to remove at Lessee's cost and expense, any Severable Modification consisting of proprietary equipment or communications equipment from any Unit prior to the return of such Unit; provided that if Lessee removes such Severable Modification that is (i) a Required Modification or (ii) such equipment is not customarily provided by the user, Lessee shall replace such proprietary equipment or communications equipment with other similar equipment.

#### Section 10. Voluntary Termination.

10.1 Right of Termination. Lessee shall have the right, as to each Type of Equipment, at its option at any time on or after the fifth anniversary of the Closing Date, from time to time to terminate this Lease with respect to either (i) all of the Units of such Type of Equipment or (ii) not less than 20% of the Units of such Type of Equipment (the "Terminated Units") if Lessee determines in good faith (as evidenced by a certificate executed by the Chief Financial Officer of Lessee) that such Units have become obsolete or surplus to Lessee's requirements, by delivering at least 120 days prior notice to Lessor and the Indenture Trustee specifying a proposed date of termination for such Units (the "Termination Date"), any such termination to be effective on the Termination Date. Except as expressly provided in this Section 10, Lessee may not voluntarily terminate this Lease with respect to the Terminated Units pursuant to this Section 10.1. So long as Lessor shall not have given Lessee a notice of election to retain the

Terminated Units in accordance with Section 10.3, Lessee may withdraw the termination notice referred to above at any time prior to the Termination Date, whereupon this Lease shall continue in full force and effect.

10.2 Sale of Equipment. During the period from the date of such notice given pursuant to Section 10.1 to the Termination Date, Lessee, as exclusive agent for Lessor and at Lessee's sole cost and expense, shall use reasonable efforts to obtain bids from Persons other than Lessee or Affiliates thereof for the cash purchase of the Terminated Units, and Lessee shall promptly, and in any event at least five Business Days prior to the proposed date of sale, certify to Lessor in writing the amount and terms of each such bid, the proposed date of such sale and the name and address of the party submitting such bid. Unless Lessor shall have elected to retain the Terminated Units in accordance with Section 10.3, on the Termination Date: (i) Lessee shall, subject to receipt (x) by Lessor of all amounts owing to Lessor pursuant to the next sentence, and (y) by the persons entitled thereto of all unpaid Supplemental Rent due on or before the Termination Date, deliver the Terminated Units to the bidder, if any, which shall have submitted the highest cash bid prior to such date (or to such other bidder as Lessee and Lessor shall agree), in the same manner as if delivery were made to Lessor pursuant to Section 6 and (ii) Lessor shall comply with the terms of the Indenture and, without recourse or warranty (except as to the absence of any Lessor's Lien) simultaneously therewith sell the Terminated Units to such bidder. The total selling price realized at such sale shall be paid to and, subject to Section 2.10 of the Indenture, retained by Lessor and, in addition, on the Termination Date, Lessee shall pay to Lessor, (A) all unpaid Basic Rent with respect to such Terminated Units due and payable on or prior to the Termination Date, (B) the excess, if any, of (1) the Termination Value for the Terminated Units computed as of the Termination Date, over (2) the net cash sales proceeds of the Terminated Units and (C) an amount equal to any Make-Whole Amount, if any, in respect of the principal amount of the Secured Equipment Notes to be prepaid in accordance with Section 2.10(a) of the Indenture, and (D) any other Rent required to be paid as of such Termination Date. If no sale shall have occurred, this Lease shall continue in full force and effect with respect to such Units. If Lessor elects not to exercise its right to retain the Terminated Units as provided in Section 10.3, Lessee, in acting as agent for Lessor, shall have no liability to Lessor for failure to obtain the best price, shall act in its sole discretion and

shall be under no duty to solicit bids publicly or in any particular market. Lessee's sole interest in acting as agent shall be to sell the Units at a price that reduces or eliminates Lessee's obligation to pay the amount provided in this Section 10.2.

10.3 Retention of Equipment by Lessor. Notwithstanding the provisions of Sections 10.1 and 10.2, Lessor may irrevocably elect by written notice to Lessee and the Indenture Trustee, no later than 60 days after receipt of Lessee's notice of termination delivered pursuant to Section 10.1, not to sell the Terminated Units to the highest bidder on the Termination Date, whereupon Lessee shall (i) deliver the Terminated Units to Lessor in the same manner as if delivery were made to Lessor pursuant to Section 6, treating the Termination Date as the termination date of the Lease Term with respect to the Terminated Units, and (ii) pay to Lessor, or to the Persons entitled thereto, all Basic Rent, all Supplemental Rent and any other amounts then due and owing on the Termination Date and unpaid; provided that upon such election by Lessor, such delivery of the Terminated Units by Lessee and payment by Lessee of all Basic Rent, all Supplemental Rent and any other amounts for such Terminated Units due and payable but unpaid to and including the Termination Date, Lessee shall have no obligation to pay any Termination Value with respect to such Terminated Units and Supplemental Rent and "any other amounts" referred to above shall not include any amount on account of any premium then due on the Secured Equipment Notes or any other amounts with respect to such Terminated Units. If Lessor elects not to sell the Terminated Units as provided in this Section 10.3, then Lessor shall pay, or cause to be paid, in accordance with Section 2.10 of the Indenture to the Indenture Trustee in funds of the type and in an amount equal to the outstanding principal amount of, and Make-Whole Amount (if any) of the Secured Equipment Notes issued in respect of such Terminated Units and all accrued interest to the date of prepayment of such Secured Equipment Note on such Termination Date. If Lessor shall fail to perform any of its obligations pursuant to this Section 10.3 and as a result thereof this Lease shall not be terminated with respect to the Terminated Units on a proposed Termination Date, Lessor shall thereafter no longer be entitled to exercise its election to retain such Terminated Units and Lessee may at its option at any time thereafter submit a new termination notice pursuant to Section 10.1 with respect to such Terminated Units specifying a proposed Termination Date occurring not earlier than five Business Days from the date of such notice.

10.4 Termination of Lease. In the event of any such sale and receipt by Lessor and the Indenture Trustee of all of the amounts provided herein, and upon compliance by Lessee with the other provisions of this Section 10, the obligation of Lessee to pay Rent hereunder for such Terminated Units shall cease and the Lease Term for the Terminated Units shall end.

Section 11. Loss, Destruction, Requisition, Etc.

11.1 Event of Loss. In the event that any Unit (i) shall suffer destruction, damage, contamination or wear which, in Lessee's good faith opinion, makes repair uneconomic or renders such Unit unfit for commercial use, (ii) shall suffer theft or disappearance for a period of 270 days, (iii) shall be permanently returned to the manufacturer pursuant to any patent indemnity provisions, (iv) shall have title thereto taken or appropriated by any governmental authority under the power of eminent domain or otherwise, (v) shall be taken or requisitioned for use by any governmental authority (other than the United States government or any agency or instrumentality thereof) under the power of eminent domain or otherwise, for a period exceeding the earlier of the last day of the Basic Term or any Renewal Term then in effect or 180 days, or (vi) shall be taken or requisitioned for use by the United States government or any agency or instrumentality thereof and such taking or requisition is continuing on the last day of the Basic Term or any Renewal Term then in effect (any such occurrence being hereinafter called an "Event of Loss"), Lessee, in accordance with the terms of Section 11.2, shall promptly and fully inform Lessor and the Indenture Trustee of such Event of Loss. If Lessee shall have determined that more than 10% of the Units of any Type of Equipment have suffered contamination or wear which makes repair uneconomical or renders such Units unfit for commercial use, Lessee shall obtain, at its own expense, an opinion of an independent expert appraiser, reasonably satisfactory to the Lessor, Vendor, the Owner Participant and the Indenture Trustee, concluding that such Units have suffered contamination or wear which makes repair uneconomic or renders such Units unfit for commercial use. In the event any of the Lessor, the Vendor, the Owner Participant or the Indenture Trustee, in good faith does not agree with the Lessee's determination that a Unit has suffered contamination or wear which makes repair uneconomic or renders such Unit unfit for commercial use, Lessee shall obtain an opinion of an independent expert appraiser, reasonably satisfactory to the Lessor, Vendor, the Owner

Participant or the Indenture Trustee, as the case may be, concluding that such Unit has suffered contamination or wear which makes repair uneconomic or renders such Unit unfit for commercial use. If such independent expert appraiser concludes that such Unit has suffered contamination or wear which makes repair uneconomic or renders such Unit unfit for commercial use, the cost and expenses arising in connection with obtaining such appraisal shall be for the account of the Lessor, Vendor, Owner Participant or Indenture Trustee, as the case may be; otherwise, the cost and expenses arising in connection with obtaining such appraisal shall be for the account of Lessee.

11.2 Replacement or Payment upon Event of Loss.

Upon the occurrence of an Event of Loss with respect to any Unit, Lessee shall within 30 days after a Responsible Officer of Lessee shall have actual knowledge of such occurrence give Lessor and the Indenture Trustee notice of such Event of Loss and of its election to perform one of the following options:

(i) as promptly as practicable, and in any event on or before the Business Day next preceding the 121st day next following the date of notice of such Event of Loss, in replacement for such Unit, Lessee shall convey or cause to be conveyed to Lessor a Replacement Unit to be leased to Lessee hereunder, such Replacement Unit to be free and clear of all Liens (other than Permitted Liens) and to have a fair market value and utility at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Lease); provided that, if Lessee shall not perform its obligation to effect such replacement under this paragraph (i) during the period of time provided herein, then Lessee shall pay on the next succeeding Stipulated Loss Payment Date that is at least 20 days after the end of such period to Lessor, or in the case of Supplemental Rent, to the person entitled thereto, the amounts specified in paragraph (ii) below; or

(ii) on or before the Business Day next preceding the 121st day next following the date of notice of such Event of Loss or on the date specified in the proviso to paragraph (i) above, if such proviso is applicable (such date being referred to herein as the "Stipulated Loss Payment Date"), Lessee shall pay or cause to be paid to Lessor or, in the case of Supplemental Rent, to the Persons entitled thereto, in funds of the type

specified in Section 3.6, (A) an amount equal to the Stipulated Loss Value of each such Unit determined as of such Stipulated Loss Payment Date, (B) if such Stipulated Loss Payment Date is a Rent Payment Date, all Basic Rent payable on such date in respect of such Unit and (C) all Supplemental Rent then due and payable hereunder in respect of such Unit.

11.3 Rent Termination. Upon the payment of all sums required to be paid pursuant to Section 11.2(ii) hereof in respect of any Unit or Units, for which Lessee has elected to pay or deemed to have elected to pay pursuant to the proviso to Section 11.2(i) the amounts specified in paragraph 11.2(ii), the Lease Term with respect to such Unit or Units and the obligation to pay Rent for such Unit or Units accruing subsequent to the Stipulated Loss Payment Date shall terminate.

11.4 Disposition of Equipment; Replacement of Unit.

(a) Upon the payment of all sums required to be paid pursuant to Section 11.2 in respect of any Unit or Units, Lessor will convey to Lessee or its designee all right, title and interest of Lessor and any Affiliate thereof in and to such Unit or Units, "as is", "where is", without recourse or warranty, except for a warranty against Lessor's Liens in and to such Unit or Units, and shall execute and deliver to Lessee or its designee such bills of sale and other documents and instruments as Lessee or its designee may reasonably request to evidence such conveyance. As to each separate Unit so disposed of, so long as no Event of Default hereunder shall have occurred and be continuing Lessee or its designee shall be entitled to any amounts arising from such disposition, plus any awards, insurance or other proceeds and damages (including any Association of American Railroads interline settlement paid upon an Event of Loss) received by Lessee, Lessor or the Indenture Trustee by reason of such Event of Loss after having paid the Stipulated Loss Value attributable thereto.

(b) At the time of or prior to any replacement of any Unit, Lessee, at its own expense, will (A) furnish Lessor with a bill of sale and an assignment of warranties with respect to the Replacement Unit, (B) cause a Lease Supplement substantially in the form of Exhibit B hereto, subjecting such Replacement Unit to this Lease, and duly executed by Lessee, to be delivered to Lessor for execution and, upon such execution, to be filed for recordation in the

same manner as provided for the original Lease Supplement in Section 16.1, (C) so long as the Indenture shall not have been satisfied and discharged, cause an Indenture Supplement substantially in the form of Exhibit A to the Indenture for such Replacement Unit, to be delivered to Lessor and to the Indenture Trustee for execution and, upon such execution, to be filed for recordation in the same manner as provided for the original Indenture Supplement in Section 16.1, (D) so long as the Indenture shall not have been satisfied and discharged, cause a financing statement or statements with respect to the Replacement Unit to be filed in such place or places as necessary in order to perfect the security interest therein created by or pursuant to the Indenture, (E) furnish Lessor and, so long as the Indenture shall not have been satisfied and discharged with an opinion of Lessee's counsel (which may be Lessee's General Counsel), to the effect that (x) the bill of sale referred to in Clause (A) above constitutes an effective instrument for the conveyance of title to the Replacement Unit to Lessor, (y) good and marketable title to the Replacement Unit has been delivered to Lessor, free and clear of all Liens (other than Permitted Liens), and (z) the Lessor shall have the same rights and interests with respect to such Replacement Unit (including, without limitation, pursuant to Section 1168 of the Bankruptcy Code) as the Lessor had with respect to the Unit so replaced and (F) furnish Lessor with a certificate of an engineer (who may be an employee of Lessee) certifying that the Replacement Unit has a fair market value and utility at least equal to the Unit so replaced (assuming such Unit was in the condition required to be maintained by the terms of this Lease) and setting forth a reasonable basis for such conclusion in reasonable detail. For all purposes hereof, upon passage of title thereto to Lessor the Replacement Unit shall be deemed part of the property leased hereunder, the Replacement Unit shall be deemed a "Unit" of Equipment as defined herein. Upon such passage of title, Lessor will transfer to Lessee, without recourse or warranty (except as to Lessor's Liens), all Lessor's right, title and interest in and to the replaced Unit, and upon such transfer, Lessor will request in writing that the Indenture Trustee execute and deliver to Lessee an appropriate instrument releasing such replaced Unit from the lien of the Indenture and releasing the Assignment of Warranties with respect to such Unit from the assignment and pledge under the Indenture.

11.5 Eminent Domain. In the event that during the Lease Term the use of any Unit is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a period which does not constitute

an Event of Loss, Lessee's obligation to pay all installments of Basic Rent shall continue for the duration of such requisitioning or taking. So long as no Event of Default shall have occurred and be continuing, Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

Section 12. Insurance.

12.1 Property Damage and Public Liability Insurance.

(a) As part of an insurance program including risk retention and self-insurance, Lessee will, at all times prior to the return of the Equipment to Lessor, at its own expense, cause to be carried and maintained (i) property damage insurance in respect of the Equipment at the time subject hereto and (ii) public liability insurance with respect to third-party personal and property damage, and Lessee will continue to carry such insurance in such amounts and for such risks and with such insurance companies and subject to such self-insurance as deemed appropriate by Lessee, but in any event not less comprehensive in amounts and against risks customarily insured against by Lessee in respect of equipment owned or leased by it similar in type to the Equipment. Any public liability insurance carried in accordance with this Section 12.1 shall include the Owner Participant, the Lessor, as lessor of the Equipment and in its individual capacity, the Vendor, and the Indenture Trustee as additional insureds as their interests may appear. Lessee shall cause the property insurance on the Equipment to provide that, so long as the Secured Equipment Notes shall remain outstanding, the proceeds up to the amount of the Stipulated Loss Value, for any loss or damage to any Unit, if any, shall be payable to the Indenture Trustee under a standard mortgage loss payable clause and thereafter to Lessor. The Lessee shall, at its own expense, be entitled to make all proofs of loss and take all other steps necessary to collect the proceeds of such insurance. All property insurance policies required to be maintained by Lessee pursuant to this Section 12 shall provide that the respective interests of Lessor, Owner Participant, Vendor and the Indenture Trustee shall not be invalidated by any action or inaction by Lessee or any other named insured and shall insure Lessor, Owner Participant, Vendor and the Indenture Trustee regardless of any breach or violation by Lessee or any named insured of warranties or conditions in such policies.

(b) Certificate of Insurance. Lessee shall, prior to the Closing Date for a Unit hereunder, furnish Lessor and the Indenture Trustee with a certificate signed by the insurer or an independent insurance broker showing the insurance then maintained by Lessee pursuant to this Section 12.1 and that all premiums thereon have been paid, or other evidence of maintenance of the insurance required hereunder, and, with respect to any renewal policy or policies, shall furnish certificates or binders evidencing such renewal as soon as practicable, but in no event later than 10 days before each scheduled expiration or renewal date of the original policy or policies.

12.2 Proceeds of Insurance. The entire proceeds of any property or casualty insurance or third party payments for damages to any Unit (including any Association of American Railroads interline settlements) received by Lessor or the Indenture Trustee shall be held by such party until, with respect to such Unit, the repairs referred to in clause (a) below are made as specified therein or payment of the Stipulated Loss Value is made, and such entire proceeds will be paid either: (a) to Lessee promptly following receipt by the Indenture Trustee or Lessor, as the case may be, of a written application for payment to Lessee for repairing or restoring the Units which have been damaged signed by an authorized officer of the Lessee certifying to the effect that: (i) Lessee has complied with the applicable provisions of the Lease, (ii) no Event of Default has occurred and is continuing, and (iii) any damage to such Units shall have been fully repaired or restored and such Units are in the same condition and have the same value and utility as the Units had before they were damaged (assuming the Units were in the condition required pursuant to this Lease); or (b) if this Lease is terminated with respect to such Unit because of an Event of Loss and Lessee has paid the Stipulated Loss Value due as a result thereof, such proceeds shall be promptly paid over to, or retained by, Lessee.

12.3 Additional Insurance. The Lessor (either directly or in the name of the Owner Participant) may at its own expense carry insurance with respect to its interest in the Units, provided that such insurance does not interfere with Lessee's ability to insure the Equipment as required by this Section 12 or adversely affect Lessee's insurance or the cost thereof, it being understood that all salvage rights to each Unit shall remain with Lessee's insurers at all times. Any insurance payments received from policies maintained by Lessor pursuant to the previous sentence shall be retained by Lessor without reducing or otherwise affect-

ing Lessee's obligations hereunder. Notwithstanding the foregoing, the Lessor shall in no event be obligated to participate in the funding of any self-insurance program of the Lessee.

Section 13. Reports; Inspection.

13.1 Duty of Lessee to Furnish. On or before May 15, 1992, and on each May 15 thereafter, Lessee will furnish to Lessor and the Indenture Trustee an accurate statement, as of the preceding December 31, (a) showing the amount, description and reporting marks of the Units then leased hereunder, the amount, description and reporting marks of all Units that may have suffered an Event of Loss during the 12 months ending on such December 31 (or since the Closing Date, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as Lessor may reasonably request; and (b) stating that, in the case of all Equipment retained during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

13.2 Lessor's Inspection Rights. Lessor, Owner Participant, Vendor and the Indenture Trustee or their authorized representatives, each shall have the right, but not the obligation, at their respective sole cost, expense and risk (including, without limitation, the risk of personal injury or death), by their respective authorized representatives, to the extent within Lessee's control: to inspect the Equipment and Lessee's records with respect thereto, during Lessee's normal business hours and upon reasonable prior notice to Lessee; provided, however, that Lessee shall not be liable, except in the case of the gross negligence or willful misconduct of Lessee or its employees or agents, for any injury to, or the death of, any Person exercising, either on behalf of Lessor, any Owner Participant, the Indenture Trustee or any prospective purchaser, the rights of inspection granted under this Section 13.2. All information obtained in connection with any such inspection shall be held confidential by Lessor, the Indenture Trustee and the Owner Participant and shall not be furnished or disclosed by them to anyone other than their accountants, agents and legal counsel and any Person with whom the Owner Participant is in good faith conducting negotiations relating to the possible transfer and sale of such Owner Participant's interest in the Equipment if such Person shall have entered into an agreement similar to that contained in this Section 13.2 whereby such Person agrees to hold such information confidential, and except as may be

required by an order of any court or administrative agency or by any statute, rule, regulation or order of any governmental authority; provided, however, that Lessor, Vendor, the Owner Trustee, the Owner Participant or the Indenture Trustee may disclose any such information (a) as has become generally available to the public (through no action on their part); (b) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over Lessor, Vendor, the Owner Trustee, the Owner Participant or the Indenture Trustee or to the National Association of Insurance Commissioners or similar organizations or their successors; (c) as may be required in response to any summons or subpoena or in connection with any litigation, provided that Lessor, Vendor, the Owner Trustee, the Owner Participant or the Indenture Trustee shall use their best efforts to give to Lessee written notice thereof if such response involves the disclosure of any such information; (d) in order to comply with any law, regulation or rule applicable to Lessor, Vendor, the Owner Trustee, the Owner Participant or the Indenture Trustee; (e) to a prospective transferee which is an institutional investor or advisor and which is not a direct and material competitor of Lessee to whom such disclosure would materially and adversely affect the competitive position of Lessee, in connection with any contemplated transfer of any Secured Equipment Note held by the Vendor who has been informed by the Vendor in accordance with the Vendor's standard procedures of the confidential nature thereof; provided that Lessor, Vendor, the Owner Trustee, the Owner Participant or the Indenture Trustee, as the case may be, shall notify Lessee in writing prior to the disclosure of the information; and (f) to a court or agency in connection with litigation involving the Operatives Agreements and/or the Secured Equipment Notes. No inspection pursuant to this Section 13.2 shall interfere with the use, operation or maintenance of the Equipment or the normal conduct of Lessee's business, and Lessee shall not be required to undertake or incur any additional liabilities in connection therewith.

#### Section 14. Events of Default.

The following events shall constitute Events of Default hereunder and each such Event of Default shall be deemed to exist and continue so long as, but only as long as, it shall not have been remedied:

(a) Lessee shall fail to make any payment of Basic Rent, Stipulated Loss Value or Termination Value within 10 Business Days after the same shall have become due; or

(b) Lessee shall fail to make any other payment of Supplemental Rent, including indemnity or tax indemnity payments, after the same shall have become due and such failure shall continue unremedied for a period of 30 days after receipt by Lessee of written notice of such failure from Lessor or the Indenture Trustee; or

(c) Lessee shall at any time fail to maintain appropriate insurance on the Equipment in accordance with this Lease; or

(d) any material representation or warranty made by Lessee herein is untrue or incorrect in any material respect as of the date of issuance or making thereof and such untruth or incorrectness shall continue to be material and unremedied for a period of 30 days after receipt by Lessee of written notice thereof from Lessor or the Indenture Trustee; provided that, if such untruth or incorrectness is capable of being remedied, no such untruth or incorrectness shall constitute an Event of Default hereunder for a period of 180 days after receipt of such notice so long as (i) Lessee is diligently proceeding to remedy such incorrectness, (ii) such default is curable but cannot be cured within thirty (30) days, and (iii) such default does not impair in any material respect the Lessor's interest in the Equipment or the Vendor's security interest in the Equipment; or

(e) Lessee shall (i) commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to any such relief or to the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) admit in writing its inability to pay its debts generally as they come due, or (iv) make a general assignment for the benefit of creditors, or (v) take any corporate action to authorize any of the foregoing; or

(f) an involuntary case or other proceeding shall be commenced against Lessee seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 90 days; or

(g) Lessee shall fail to observe or perform any other of the covenants or agreements to be observed or performed by Lessee hereunder and such failure shall continue unremedied for 30 days after written notice from Lessor or the Indenture Trustee to Lessee, specifying the failure and demanding the same to be remedied; provided that, if such failure is capable of being remedied, no such failure shall constitute an Event of Default hereunder for a period of 180 days after receipt of such notice so long as (i) Lessee is diligently proceeding to remedy such failure, (ii) such default is curable but cannot be cured within thirty (30) days, and (iii) such default does not impair in any material respect the Lessor's interest in the Equipment or the Vendor's security interest in the Equipment;

provided that, notwithstanding anything to the contrary contained in this Lease, any failure of Lessee to perform or observe any covenant or agreement herein shall not constitute an Event of Default if such failure is caused solely by reason of an event referred to in the definition of "Event of Loss" so long as Lessee is continuing to comply with the applicable terms of Section 11. Lessor shall notify Lessee immediately upon Lessee's failure to make any payment of Basic Rent after the same shall have become due; provided that the giving of such notice by Lessor shall not be a condition to the start of the 10-Business Days period referred to in paragraph (a) of this Section 14.

#### Section 15. Remedies.

15.1 Remedies. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing, Lessor may, at its option, declare this Lease to be in default by a written notice to Lessee; and at any time thereafter, so long as Lessee shall not have remedied all outstanding Events of Default, Lessor may do

one or more of the following as Lessor in its sole discretion shall elect, to the extent permitted by, and subject to compliance with any mandatory requirements of, applicable law then in effect:

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

(b) by notice in writing to Lessee, cancel this Lease, whereupon all right of Lessee to the possession and use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but Lessee shall remain liable as hereinafter provided; and thereupon, Lessor may by its agents enter upon the premises of Lessee or other premises where any of the Equipment may be located and take possession of and remove all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of Lessee, or its successor or assigns, to use such Units for any purpose whatever;

(c) sell any Unit at public or private sale, as Lessor may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such sale or for the proceeds thereof (except to the extent required by paragraph (f) below if Lessor elects to exercise its rights under said paragraph), in which event Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit hereunder due for any periods subsequent to the date of such sale shall terminate (except to the extent that Basic Rent and other Rent are to be included in computations under paragraph (e) or (f) below if Lessor elects to exercise its rights under either of said paragraphs);

(d) hold, keep idle or lease to others any Unit as Lessor in its sole discretion may determine, free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such action or inaction or for any proceeds with respect thereto, except that Lessee's obligation to pay Basic Rent and other Rent with respect to such Unit due for any periods subsequent to the date upon which Lessee shall have been deprived of possession and use of such Unit

pursuant to this Section 15 shall be reduced by the net proceeds, if any, received by Lessor from leasing such Unit to any Person other than Lessee;

(e) whether or not Lessor shall have exercised, or shall thereafter at any time exercise, any of its rights under paragraph (a), (b), (c) or (d) above with respect to any Unit, Lessor, by written notice to Lessee specifying a payment date (which date shall be deemed to be a "Casualty Value Determination Date" for the purposes of computing Stipulated Loss Value) which shall be not earlier than 30 days after the date of such notice, may demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, on the payment date specified in such notice, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and other Rent for such Unit due after the payment date specified in such notice), whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice: (i) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit, over the present value of the Fair Market Rental Value of such Unit or, if Lessor has leased such Unit to others pursuant to paragraph (d) above, for the period of such lease the periodic rent payable thereunder, in each case for the remainder of the Basic Term or any Renewal Term then in effect, as the case may be, as of the payment date specified in such notice, such present values to be computed on the basis of a per annum rate of discount equal to the Debt Rate specified in the Secured Equipment Notes, compounded semi-annually, from the respective dates upon which such rents would be paid; or (ii) an amount equal to the excess, if any, of the Stipulated Loss Value for such Unit computed as of the payment date specified in such notice over the Fair Market Sales Value of such Unit as of the payment date specified in such notice; and

(f) if Lessor shall have sold any Unit pursuant to paragraph (c) above, Lessor, in lieu of exercising its rights under paragraph (e) above with respect to such Unit may, if it shall so elect, demand that Lessee pay to Lessor, and Lessee shall pay to Lessor, as liquidated damages for loss of a bargain and not as a penalty (in lieu of the Basic Rent and any other Rent for such Unit due subsequent to the Rent Payment Date next preceding such sale), any unpaid Rent for such Unit due for periods up to and including the Rent Payment Date next preceding the date of such sale and, if

that date is a Rent Payment Date, the Basic Rent due on that date, plus the amount, if any, by which the Stipulated Loss Value of such Unit computed as of the Rent Payment Date next preceding the date of such sale or, if such sale occurs on a Rent Payment Date, then computed as of such Rent Payment Date, exceeds the net proceeds of such sale.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid Rent due hereunder before or during the exercise of any of the foregoing remedies, and for legal fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Lessor's remedies with respect thereto, including without limitation the repayment in full of any costs and expenses necessary to be expended in repairing or modifying any Unit in order to cause it to be in compliance with all maintenance and regulatory standards imposed by this Lease.

15.2 Cumulative Remedies. The remedies in this Lease provided in favor of Lessor 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.

15.3 No Waiver. No delay or omission to exercise any right, power or remedy accruing to Lessor upon any breach or default by Lessee under this Lease shall impair any such right, power or remedy of Lessor, nor shall any such delay or omission be construed as a waiver of any breach or default, or of any similar breach or default hereafter occurring; nor shall any waiver of a single breach or default be deemed a waiver of any subsequent breach or default.

Section 16. Filings; Further Assurances.

16.1 Filings. On or prior to the Closing Date with respect to a Unit, Lessee will (i) cause this Lease, the Lease Supplement dated such Closing Date, the Indenture and the Indenture Supplement dated such Closing Date to be duly filed and recorded with the ICC in accordance with 49 U.S.C. § 11303, (ii) cause this Lease, the Lease Supplement dated such Closing Date, the Indenture and the Indenture Supplement dated such Closing Date to be deposited with the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada and cause notice of such deposit to be forthwith given in The Canada Gazette in accordance with

said Section 90, (iii) cause Uniform Commercial Code financing statements naming the Owner Trustee as debtor and the Indenture Trustee as secured party to be filed in such public offices as are deemed necessary or appropriate by Lessor, the Indenture Trustee, the Vendor or the Owner Participant to perfect the right, title and interest of the Indenture Trustee in the Indenture Estate and precautionary Uniform Commercial Code financing statements naming Lessee as debtor, the Owner Trustee as secured party and the Indenture Trustee as assignee of the secured party to be filed in such public offices as are deemed necessary or appropriate by the Indenture Trustee, the Vendor, the Owner Trustee or the Owner Participant to perfect the right, title and interest of the Indenture Trustee as assignee of the Owner Trustee in the Equipment, and (iv) file, register or record this Lease, the Lease Supplement, the Indenture and the Indenture Supplement and all financing and continuation statements and similar instruments, in such other places within the United States, Canada and Mexico as Lessor, the Indenture Trustee and the Owner Participant may reasonably request, and will furnish Lessor and the Indenture Trustee proof thereof.

16.2 Additional Filings. On or prior to any other Closing Date, Lessee will (i) cause the Lease Supplement dated such Closing Date and the Indenture Supplement dated such Closing Date to be duly filed and recorded with the ICC in accordance with 49 U.S.C. § 11303, (ii) cause the Lease Supplement dated such Closing Date and the Indenture Supplement dated such Closing Date to be deposited with the Registrar General of Canada and cause notice of such deposit to be forthwith given in The Canada Gazette pursuant to Section 90 of the Railway Act of Canada, and (iii) file, register or record the Lease Supplement dated such Closing Date and the Indenture Supplement dated such Closing Date, and all financing and continuation statements and similar instruments, in such other places within the United States, Canada and Mexico as Lessor, the Indenture Trustee, the Vendor or the Owner Participant may reasonably request, and will furnish Lessor and the Indenture Trustee proof thereof.

16.3 Further Assurances. Lessee will duly execute and deliver to Lessor such further documents and assurances and take such further action as Lessor may from time to time reasonably request in order to effectively carry out the intent and purpose of this Lease and to establish and protect the rights and remedies created in favor of Lessor hereunder, including, without limitation, if requested by Lessor, the execution and delivery of supplements or

amendments hereto, in recordable form, subjecting to this Lease any Replacement Unit and the recording or filing of counterparts hereof or thereof in accordance with the laws of such jurisdiction as Lessor may from time to time deem advisable, and the filing of financing statements with respect thereto; provided that this sentence is not intended to impose upon Lessee any additional liabilities not otherwise contemplated by this Lease.

16.4 Expenses. Except as provided in Section 2.5 of the Participation Agreement, Lessee will pay all costs, charges and expenses (including reasonable attorneys' fees) incident to any such filing, refiling, recording and re-recording or depositing and re-depositing of any such instruments or incident to the taking of such action.

Section 17. Lessor's Right to Perform.

If Lessee fails to make any payment required to be made by it hereunder or fails to perform or comply with any of its other agreements contained herein and such failure can be cured with the payment of money, Lessor may itself make such payment or perform or comply with such agreement, after giving not less than five Business Days' prior notice thereof to Lessee (except in the event that an Indenture Event of Default resulting solely from an Event of Default shall have occurred and be continuing, in which event Lessor may effect such payment, performance or compliance to the extent necessary to cure such Indenture Event of Default with notice given concurrently with such payment, performance or compliance) in a reasonable manner, but shall not be obligated hereunder to do so, and the amount of such payment and of the reasonable expenses of Lessor incurred in connection with such payment or the performance of or compliance with such agreement, as the case may be, together with interest thereon at the Late Rate, to the extent permitted by applicable law, shall be deemed to be Supplemental Rent, payable by Lessee to Lessor on demand.

Section 18. Assignment.

18.1 Assignment by Lessor. Lessee and Lessor hereby confirm that concurrently with the execution and delivery of this Lease, Lessor has executed and delivered to the Indenture Trustee the Indenture, which assigns as collateral security and grants a security interest to the Indenture Trustee in, to and under this Lease and certain of the Rent payable hereunder, all as more explicitly set forth in the Granting Clause of the Indenture. Lessee and Lessor

hereby agree that Lessor shall be entitled to assign and convey its right, title and interest in and to this Lease and any or all Units pursuant to Section 9(c) of the Participation Agreement. Lessor agrees that it shall not otherwise assign or convey its right, title and interest in and to this Lease, the Equipment or any Unit, except as expressly permitted by and subject to the provisions of the Participation Agreement, the Trust Agreement and the Indenture.

18.2 Assignment by Lessee. Except as otherwise provided in Section 8.3 or in the case of any requisition for use by an agency or instrumentality of the United States government referred to in Section 11.1, Lessee will not, without the prior written consent of Lessor, assign any of its rights or obligations hereunder, except as provided in the Participation Agreement.

18.3 Sublessee's Performance and Rights. Any obligation imposed on Lessee in this Lease shall require only that Lessee perform or cause to be performed such obligation, even if stated herein as a direct obligation, and the performance of any such obligation by any permitted assignee, sublessee or transferee under an assignment, sublease or transfer agreement then in effect and permitted by the terms of this Lease shall constitute performance by Lessee and discharge such obligation by Lessee. Except as otherwise expressly provided herein, any right granted to Lessee in this Lease shall grant Lessee the right to exercise such right or permit such right to be exercised by any such assignee, sublessee or transferee, provided that Lessee's renewal option set forth in Section 22.2 may be exercised only by Lessee itself or by any assignee or transferee of, or successor to, Lessee in a transaction permitted by Section 6.8 of the Participation Agreement. The inclusion of specific references to obligations or rights of any such assignee, sublessee or transferee in certain provisions of this Lease shall not in any way prevent or diminish the application of the provisions of the two sentences immediately preceding with respect to obligations or rights in respect of which specific reference to any such assignee, sublessee or transferee has not been made in this Lease.

Section 19. Net Lease, Etc.

This Lease is a net lease and Lessee's obligation to pay all Rent payable hereunder shall, subject to Section 3.5, Section 5.2 or Section 24, be absolute and unconditional under any and all circumstances of any character includ-

ing, without limitation, any abatement of Rent or setoff (except as provided in Section 3.5 or Section 24) against Rent; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Lessor or Lessee be otherwise affected, by reason of, any defect in, damage to or loss or destruction of, or requisitioning of, any Unit by condemnation or otherwise, the prohibition of Lessee's use of any Unit (other than by Lessor's or Vendor's breach of Lessee's or any sublessee's right of quiet enjoyment), the interference with such use by any Person or the lack of right, power or authority of Lessor or any other Person to enter into this Lease or any Operative Agreement, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the Rent payable by Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated in accordance with the terms of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender this Lease with respect to any Unit, except in accordance with the express terms hereof. If for any reason whatsoever this Lease shall be terminated in whole or in part by operation of law or otherwise, except as specifically provided herein, Lessee nonetheless agrees, subject to Section 3.5, to the maximum extent permitted by law, to pay to Lessor or to the Indenture Trustee, as the case may be, an amount equal to each installment of Basic Rent and all Supplemental Rent due and owing, at the time such payment would have become due and payable in accordance with the terms hereof had this Lease not been terminated in whole or in part. Nothing contained herein shall be construed to waive any claim which Lessee might have under any of the Operative Agreements or otherwise or to limit the right of Lessee to make any claim it might have against Lessor or any other Person or to pursue such claim in such manner as Lessee shall deem appropriate.

#### Section 20. Notices.

Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail and courier service, (b) in the case of notice by United

States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed in writing by either of the methods set forth in clauses (a) and (b) above, in each case addressed to the following Person at its respective address set forth below or at such other address as such Person may from time to time designate by written notice to the other Persons listed below:

If to Lessor:

First Security Bank of Utah,  
National Association  
79 South Main Street  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Department

Fax No.: (801) 350-5053  
Confirmation No.: (801) 350-5630

If to the Indenture Trustee:

Wilmington Trust Company  
Rodney Square North  
Wilmington, Delaware 19890  
Attention: Corporate Trust Administration

Fax No.: (302) 651-1567  
Confirmation No.:

If to Lessee:

Burlington Northern Railroad Company  
777 Main Street  
Fort Worth, TX 76102-5384  
Attention: Treasurer

Fax No.: (817) 878-2314  
Confirmation No.: (817) 878-7901

Section 21. Concerning the Indenture Trustee.

21.1 Limitation of Indenture Trustee's Liabilities. Notwithstanding any provision herein or in any of the Operative Agreements to the contrary, the Indenture Trustee's obligation to take or refrain from taking any actions, or to use its discretion (including, but not limit-

ed to, the giving or withholding of consent or approval and the exercise of any rights or remedies under such Operative Agreements), and any liability therefor, shall, in addition to any other limitations provided herein or in the other Operative Agreements, be limited by the provisions of the Indenture, including, but not limited to, Article VI thereof.

21.2 Right, Title and Interest of Indenture Trustee under Lease. It is understood and agreed that the right, title and interest of the Indenture Trustee in, to and under this Lease and the Rent due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of Lessee in and to the Equipment.

Section 22. Termination upon Purchase by Purchase Option Holder; Options to Renew.

22.1 Termination upon Purchase by Purchase Option Holder. If the Purchase Option Holder shall have exercised its option to purchase any Unit pursuant to Section 9 of the Participation Agreement, upon payment by the Purchase Option Holder of the purchase price with respect to such Unit as provided in Section 9 of the Participation Agreement, and upon payment by Lessee of all Rent then due and payable under this Lease with respect to such Unit, the Lease Term shall end with respect to such Unit and the obligations of Lessee to pay Rent hereunder with respect to such Unit (except for Supplemental Rent obligations surviving pursuant to the Participation Agreement or the Tax Indemnity Agreement or which have otherwise accrued but not been paid as of the date of such payment) shall cease.

22.2 Renewal Option at Expiration of Basic Term or Renewal Term.

(a) So long as no Event of Default shall have occurred and be continuing and subject to Section 22.1, Lessee shall have the right, as to each Type of Equipment, upon no less than 90 days prior irrevocable notice to Lessor, on the Basic Term Expiration Date, to renew this Lease with respect to either (i) all Units of any Type of Equipment or not less than 20% of the Units of any Type of Equipment, for one Renewal Term of up to five (5) years (the "Fixed Rate Renewal Term"), commencing on the Renewal Term Commencement Date for such Units; provided that the aggregate duration of the Fixed Rate Renewal Term for such Units, when added to the duration of the Interim Term for

such Units and the Basic Term for such Units, shall not exceed either (i) 80% of the estimated useful life of such Units, or (ii) the point at which such Units are estimated to have a Fair Market Sales Value of 20% of the original Equipment Cost of such Units (without giving effect to inflation or deflation since the Closing Date for such Units), in each case as determined by an appraisal of an independent expert appraiser reasonably acceptable to Lessor, which appraisal shall be reasonably satisfactory in form and substance to Lessor in respect of the requirements set forth in clauses (i) and (ii) above, completed at a point prior to the end of the Basic Term selected by Lessee. All of the provisions of this Lease, other than Section 10, shall be applicable during the Fixed Rate Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 22.5 hereof, and Basic Rent for such Units shall be equal to the lesser of (i) the Fair Market Rental Value for such Units and (ii) fifty percent (50%) of the average annual Basic Rent of such Units over the Basic Term, and shall be payable semi-annually in arrears.

(b) So long as no Event of Default shall have occurred and be continuing and subject to Section 22.1, Lessee shall have the right, as to each Type of Equipment, upon not less than 180 days prior notice (which shall become irrevocable if not revoked at least 90 days prior to the end of the Fixed Rate Renewal Term or the current Fair Market Renewal Term pursuant to this Section, as the case may be) to Lessor at the end of the Fixed Rate Renewal Term or any Fair Market Renewal Term pursuant to this Section, to renew this Lease with respect to either (i) all Units of any Type of Equipment or (ii) not less than 20% of the Units of any Type of Equipment for one or more Fair Market Renewal Terms of not less than one year, commencing at the end of any Renewal Term. Basic Rent for any such Fair Market Renewal Term equal to the then Fair Market Rental Value of such Units shall be payable in semiannual installments in arrears. All other provisions of this Lease, other than Section 10 hereof, shall be applicable during any such Fair Market Renewal Term for such Units, except that the Stipulated Loss Values for such Units shall be determined in accordance with Section 22.5.

22.3 Lessee's Notice. Not less than 180 days prior to the expiration of the Basic Term Lessee agrees to provide Lessor with a good faith, non-binding indication of its current intention with respect to whether it will (i)

renew this Lease with respect to any Units pursuant to Section 22.2 hereof, or (ii) return such Units to Lessor pursuant to Section 6 hereof.

22.4 Determination of Fair Market Rental Value. Lessee may notify Lessor that Lessee desires a determination of the Fair Market Rental Value of such Units for a Renewal Term commencing upon the Renewal Term Commencement Date. Lessee's request for a determination of Fair Market Rental Value shall not obligate Lessee to exercise any of the options provided in Section 22.2.

22.5 Stipulated Loss Value During Renewal Term. During a Renewal Term, the Stipulated Loss Value of any Unit shall be determined on the basis of the Fair Market Sales Value of such Unit as of the first day of such Renewal Term, reduced in equal monthly increments to the Fair Market Sales Value of such Unit as of the last day of such Renewal Term.

Section 23. Limitation of Lessor's Liability.

It is expressly agreed and understood that all representations, warranties and undertakings of Lessor hereunder (except as expressly provided herein) shall be binding upon Lessor only in its capacity as Owner Trustee under the Trust Agreement, except that Lessor (or any successor Owner Trustee) shall be personally liable for its gross negligence or willful misconduct or for its breach of its covenants, representations or warranties contained herein.

Section 24. Lessee's Right of Set-Off.

If at any time that Lessee is required to make a payment of Termination Value pursuant to Section 10 or Stipulated Loss Value pursuant to Section 11, or if at the time that Lessee is required to make a payment of Termination Value or Stipulated Loss Value Lessee is also required to make any indemnity payment pursuant to Section 7 of the Participation Agreement or Section 3 of the Tax Indemnity Agreement, there shall exist a Lessor's Lien, or the Owner Participant shall have failed to reimburse Lessee pursuant to Section 2.2(c) of the Participation Agreement for the costs and expenses incurred by Lessee to lift a Lessor's Lien, attributable to any act or omission of or claim against the Owner Participant, or Lessor has breached Lessee's right of quiet enjoyment, Lessee shall be entitled to deduct from the portion required to be paid to the Owner Participant or Owner Trustee of such payment of Termination Value, Stipulated Loss Value, or such payment of indemnity,

or such payment of purchase price, as the case may be, an amount sufficient to discharge such Lessor's Lien or to so reimburse Lessee, as the case may be. Notwithstanding anything contained in this Section 24 to the contrary, any payments of Termination Value or Stipulated Loss Value made to the Indenture Trustee shall be in an amount which, together with any other amounts payable hereunder, is at least sufficient to pay in full, as of the date of payment thereof, the amount of principal of, and any accrued and unpaid interest on, the Secured Equipment Notes, together with premium, if any, thereon and, to such extent, shall not be subject to set-off hereunder.

Section 25. Investment of Security Funds.

Any moneys received by Lessor or Indenture Trustee pursuant to Section 12.2 which are required to be paid to Lessee after completion of repairs to be made pursuant to Section 12.2 shall, until paid to Lessee as provided in Section 12.2 or as otherwise applied as provided herein or in the Trust Agreement and Indenture, be invested in Permitted Investments by Lessor (unless the Indenture shall not have been discharged, in which case, by the Indenture Trustee as provided in Section 6.04(b) of the Indenture) from time to time as directed in writing by Lessee if such investments are reasonably available for purchase. There shall be promptly remitted to Lessee any gain (including interest received) realized as the result of any such investment (net of any fees, commissions and other expenses, if any, incurred in connection with such investment) and Lessee will promptly pay to Lessor or the Indenture Trustee, as the case may be, on demand, the amount of any loss realized as the result of any such investment (together with any fees, commissions and other expenses, if any, incurred in connection with such investment), such amount to be disposed of in accordance with the terms of the Trust Agreement and the Indenture.

Section 26. Miscellaneous.

26.1 Governing Law; Severability. This Lease, and any extensions, amendments, modifications, renewals or supplements hereto shall be delivered in New York and shall be governed by and construed in accordance with the internal laws and decisions (as opposed to conflicts of law provisions) of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation. Whenever possible, each provision of this Lease shall be interpreted

in such manner as to be effective and valid under applicable law, but if any provision of this Lease shall be prohibited by or invalid under the laws of any jurisdiction, such provision, as to such jurisdiction, shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Lease in any other jurisdiction.

26.2 Execution in Counterparts. This Lease, and any amendment or supplement hereto, may be executed in any number of counterparts, each executed counterpart constituting an original and in each case such counterparts shall constitute but one and the same instrument; provided, however, that to the extent that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code) no security interest in this Lease may be created through the transfer or possession of any counterpart hereof other than the counterpart bearing the receipt therefor executed by the Indenture Trustee on the signature page hereof, which counterpart shall constitute the only "original" hereof for purposes of the Uniform Commercial Code.

26.3 Headings and Table of Contents; Section References. The headings of the sections of this Lease and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof. All references herein to numbered sections, unless otherwise indicated, are to sections of this Lease.

26.4 Successors and Assigns. This Lease shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective permitted successors and assigns.

26.5 True Lease. It is the intent of the parties to this Lease that it will be a true lease for purposes of New York law and the Bankruptcy Code and not a "conditional sale", and that Lessor shall at all times be considered to be the owner of each Unit which is the subject of this Lease for the purposes of all Federal, state, city and local income taxes or for franchise taxes measured by income, and that this Lease conveys to Lessee no right, title or interest in any Unit except as lessee. Nothing contained in this Section 26.5 shall be construed to limit Lessee's use or operation of any Unit or constitute a representation, warranty or covenant by Lessee as to tax consequences

26.6 Amendments and Waivers. No term, covenant, agreement or condition of this Lease may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto; provided, however, that any breach or default, once waived in writing, unless otherwise specified in such waiver, shall not be deemed continuing for any purpose of the Operative Agreements.

26.7 Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on the behalf of any such party under this Lease, shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby on any Closing Date regardless of any investigation made by any such party or on behalf of any such party.

26.8 Business Days. If any payment is to be made hereunder or any action is to be taken hereunder on any date that is not a Business Day, such payment or action otherwise required to be made or taken on such date shall be made or taken on the immediately succeeding Business Day with the same force and effect as if made or taken on such scheduled date and as to any payment (provided any such payment is made on such succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

26.9 Directly or Indirectly. Where any provision in this Lease refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease to be duly executed and delivered on the day and year first above written.

LESSOR:

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity except as otherwise expressly provided but solely as Owner Trustee

By:   
Name: BRETT KING  
Title: ASSISTANT TRUST OFFICER

LESSEE:

BURLINGTON NORTHERN RAILROAD COMPANY

By:   
Name: Robert F. McKenney  
Title: Senior Vice President and Treasurer

STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

On this 15 day of October, 1991, before me personally appeared BRETT R. KING to me personally known, who being by me duly sworn, says that he is a ASSISTANT TRUST OFFICER of First Security Bank of Utah, NA, that said instrument was signed and sealed on October 15, 1991, on behalf of association 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.

By: Eugene F. Kenny  
Notary Public

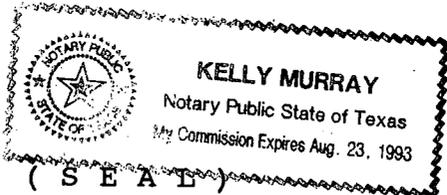
( S E A L )

My Commission Expires: \_\_\_\_\_

EUGENE F. KENNY  
Notary Public, State of New York  
No. 31-4892402  
Qualified in New York County  
Commission Expires Sept. 3, 1993

STATE OF Texas )  
 ) ss:  
COUNTY OF Tarrant )

On this 15 day of October, 1991, before me personally appeared Robert F. McKenney to me personally known, who being by me duly sworn, says that he is a Senior Vice President and Treasurer of Burlington Northern Railroad Company, that said instrument was signed and sealed on October 15, 1991, 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.



By: Kelly Murray  
Notary Public

My Commission Expires: August 23, 1993

EXHIBIT A  
to the  
Equipment Lease Agreement

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LEASE SUPPLEMENT NO. \_\_\_\_\_

Dated \_\_\_\_\_, 1991

between

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION  
Lessor

and

BURLINGTON NORTHERN RAILROAD COMPANY  
Lessee

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CERTAIN OF THE RIGHT, TITLE AND INTEREST OF LESSOR IN AND TO THIS LEASE SUPPLEMENT, THE EQUIPMENT COVERED HEREBY AND THE RENT DUE AND TO BECOME DUE UNDER THE LEASE HAVE BEEN ASSIGNED AS COLLATERAL SECURITY TO, AND ARE SUBJECT TO A SECURITY INTEREST IN FAVOR OF, FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS INDENTURE TRUSTEE UNDER A TRUST INDENTURE AND SECURITY AGREEMENT, DATED AS OF OCTOBER 1, 1991, BETWEEN SAID INDENTURE TRUSTEE, AS SECURED PARTY, AND THE LESSOR, AS DEBTOR. INFORMATION CONCERNING SUCH SECURITY INTEREST MAY BE OBTAINED FROM THE INDENTURE TRUSTEE AT ITS ADDRESS SET FORTH IN SECTION 20 OF THE LEASE. TO THE EXTENT, IF ANY, THAT THIS LEASE SUPPLEMENT CONSTITUTES CHATTEL PAPER (AS SUCH TERM IS DEFINED IN THE UNIFORM COMMERCIAL CODE AS IN EFFECT IN ANY APPLICABLE JURISDICTION), NO SECURITY INTEREST IN THIS LEASE SUPPLEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART THAT CONTAINS THE RECEIPT THEREFOR EXECUTED BY WILMINGTON TRUST, AS INDENTURE TRUSTEE, ON OR IMMEDIATELY FOLLOWING THE SIGNATURE PAGE THEREOF. SEE SECTION 26.2 OF THE LEASE FOR INFORMATION CONCERNING THE RIGHTS OF THE ORIGINAL HOLDER AND THE HOLDERS OF THE VARIOUS COUNTERPARTS HEREOF.

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Filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 on \_\_\_\_\_, 1991, at --:-- .M.  
Recordation Number \_\_\_\_\_, and deposited in the office of the Registrar General of Canada pursuant to Section 90 of the Railway Act of Canada on \_\_\_\_\_, 1991, at \_\_\_\_:\_\_\_\_.M.

LEASE SUPPLEMENT NO. \_\_\_\_\_

LEASE SUPPLEMENT NO. \_\_\_\_\_ dated \_\_\_\_\_, 1991, (this "Lease Supplement") between FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, not in its individual capacity but solely as Owner Trustee ("Lessor") under the Trust Agreement, and BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation ("Lessee");

W I T N E S S E T H :

WHEREAS, Lessor and Lessee have heretofore entered into that certain Equipment Lease Agreement dated as of October 1, 1991, (the "Lease"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings specified in Appendix A to the Lease;

WHEREAS, the Participation Agreement and the Lease provide that on the Closing Date, Vendor shall deliver to Owner Trustee a Vendor Bill of Sale dated such date by which Vendor bargains, conveys, assigns, sets over, sells and delivers to Owner Trustee, and Owner Trustee purchases and accepts from the Vendor, the Units to be conveyed on such Closing Date, and said Bill of Sale has been delivered by Vendor and accepted by Owner Trustee on such Closing Date;

WHEREAS, the Lease provides for the execution and delivery of a Lease Supplement substantially in the form hereof for the purpose of confirming the acceptance and lease of the Units under the Lease as and when delivered by Lessor to Lessee in accordance with the terms thereof;

NOW, THEREFORE, in consideration of the premises and other good and sufficient consideration, Lessor and Lessee hereby agree as follows:

1. Lessee hereby acknowledges and confirms that the Units set forth on Appendix A hereto comply in all material respects with the specifications for such Units and are in good working order.

2. Lessor hereby confirms delivery and lease to Lessee, and Lessee hereby confirms acceptance and lease from Lessor, under the Lease as hereby supplemented, the Units listed on Appendix A hereto.

3. Lessee hereby represents and warrants that no Event of Loss has occurred with respect to the Units set forth on Appendix A hereto as of the date hereof.

4. The Closing Date of the Units described above is the date of this Lease Supplement set forth in the opening paragraph hereof.

5. The aggregate Equipment Cost of the Units leased hereunder is \$63,744,000 and the amounts comprising such Equipment Cost are set forth on Schedule 1 hereto. The Stipulated Loss Values and Termination Values applicable in respect of the Units are set forth, respectively, on Schedules 4 and 5 to the Participation Agreement.

6. Lessee hereby confirms its agreement, in accordance with the Lease as supplemented by this Lease Supplement, to pay Rent to Lessor for each Unit leased hereunder as provided for in the Lease.

7. The execution and delivery of this Lease Supplement will in no way relieve or decrease the responsibility of any manufacturer for the warranties it has made with respect to any Unit.

8. Any and all notices, requests, certificates and other instruments executed and delivered after the execution and delivery of this Lease Supplement may refer to the "Equipment Lease Agreement, dated as of October 1, 1991", the "Lease Agreement, dated as of October 1, 1991" or the "Lease, dated as of October 1, 1991", may identify the Lease in any other respect without making specific reference to this Lease Supplement, but nevertheless all such references shall be deemed to include this Lease Supplement, unless the context shall otherwise require.

9. This Lease Supplement shall be construed in connection with and as a part of the Lease, and all terms, conditions and covenants contained in the Lease shall be and remain in full force and effect.

10. This Lease Supplement may be executed in any number of counterparts, each executed counterpart constituting an original but all together one and the same instrument.

11. This Lease Supplement is being delivered in the State of New York and shall in all respects be governed by, and construed in accordance with, the laws of the State of New York, including all matters of construction, validity and performance.

IN WITNESS WHEREOF, the Lessor and the Lessee have caused this Lease Supplement to be duly executed and delivered on the day and year first above written.

LESSOR:

FIRST SECURITY BANK OF UTAH,  
NATIONAL ASSOCIATION  
not in its individual capacity except as otherwise expressly provided but solely as Owner Trustee

By: \_\_\_\_\_

Name:

Title:

LESSEE:

BURLINGTON NORTHERN RAILROAD COMPANY

By: \_\_\_\_\_

Name:

Title:

STATE OF UTAH )  
 ) ss:  
COUNTY OF SALT LAKE )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1991, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of \_\_\_\_\_, that said instrument was signed and sealed on \_\_\_\_\_, 1991, on behalf of such association 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.

By: \_\_\_\_\_  
Notary Public

( S E A L )

My Commission Expires: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1991, before me personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that he is a \_\_\_\_\_ of \_\_\_\_\_, that said instrument was signed and sealed on \_\_\_\_\_, 1991, 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.

By: \_\_\_\_\_  
Notary Public

( S E A L )

My Commission Expires: \_\_\_\_\_

# APPENDIX A

## TO THE LEASE SUPPLEMENT

<u>Type of Equipment</u>	<u>Number of Units</u>	<u>Reporting Marks</u>
<u>TYPE A EQUIPMENT</u>		
SD60-M Locomotives	14	BN 9250 thru BN 9263
<u>TYPE B EQUIPMENT</u>		
GP39-2 Locomotives	23	BN 2759 thru BN 2761 BN 2870 thru BN 2874 BN 2885 thru BN 2899
<u>TYPE C EQUIPMENT</u>		
Aluminum Gondola Cars	240	BN 533641 thru BN 533880
<u>TYPE D EQUIPMENT</u>		
65' Gondola Cars	130	BN 580610 thru BN 580739
<u>TYPE E EQUIPMENT</u>		
Single Double Stack Cars	16	BN 64003 thru BN 64018
<u>TYPE F EQUIPMENT</u>		
Triple Double Stack Cars	31	BN 64019 thru BN 64049

APPENDIX A  
to the  
Participation Agreement  
Equipment Lease Agreement  
Trust Indenture and Security Agreement

DEFINITIONS

General Provisions

The following terms shall have the following meanings for all purposes of the Operative Agreements referred to below, unless otherwise defined in an Operative Agreement or the context thereof shall otherwise require and such meanings shall be equally applicable to both the singular and the plural forms of the terms herein defined. In the case of any conflict between the provisions of this Appendix A and the provisions of the main body of any Operative Agreement, the provisions of the main body of such Operative Agreement shall control the construction of such Operative Agreement.

Unless the context otherwise requires, (i) references to agreements shall be deemed to mean and include such agreements as the same may be amended, supplemented and otherwise modified from time to time, and (ii) references to parties to agreements shall be deemed to include the successors and permitted assigns of such parties.

Defined Terms:

"Advance" shall have the meaning specified in Section 3.5 of the Lease.

"Affiliate" of any Person shall mean any other Person which directly or indirectly controls, or is controlled by, or is under a common control with, such Person. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, and the terms "controlling" and "controlled" shall have meanings correlative to the foregoing.

"Appraisal" shall have the meaning specified in Section 4.3(a) of the Participation Agreement.

"Assignment and Assumption Agreement" shall mean an assignment and assumption agreement entered into between an Owner Participant and a permitted transferee.

"Average Life Date" shall mean, with respect to the payment of Secured Equipment Notes, the date which follows the prepayment date by a period equal to the Remaining Weighted Average Life of such Secured Equipment Notes.

"Bankruptcy Code" shall mean title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor thereto.

"Basic Rent" shall mean, with respect to any Unit of Equipment, all rent payable by the Lessee to the Lessor pursuant to Section 3.2 of the Lease for the Basic Term for such Unit, and all rent payable pursuant to Section 22.2 of the Lease for any Renewal Term for such Unit.

"Basic Term" shall have the meaning specified in Section 3.1 of the Lease.

"Basic Term Commencement Date" shall mean, April 16, 1992.

"Basic Term Expiration Date" shall mean April 16, 2012.

"Beneficial Interest" shall mean the interest of the Owner Participant under the Trust Agreement.

"BNI" shall mean Burlington Northern, Inc., a Delaware corporation or its successors and assigns.

"Business Day" shall mean any day other than a Saturday, Sunday or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, Fort Worth, Texas, the city and state in which the principal place of business of the Owner Participant is located, the city and state in which the principal corporate trust office of the Owner Trustee is located, and, until the lien of the Indenture has been discharged, the city and state in which the principal corporate trust office of the Indenture Trustee is located.

"Casualty Loss Determination Date" with respect to any Unit shall mean the date specified in Schedule 4 to the Participation Agreement which is the same as or immediately precedes a Stipulated Loss Payment Date on which Stipulated Loss Value is payable with respect to such Unit.

"Certificate of Acceptance" shall have the meaning specified in Section 2 of the Lease.

"Change in Tax Law" shall mean a change, amendment, modification, addition or deletion in or to the Code, any regulation thereunder (whether proposed, temporary or final) or any Revenue Ruling, Revenue Procedure or other published administrative determination, in each case after the execution and delivery of the Participation Agreement.

"Closing Date" shall mean the date the Units of Equipment are delivered to the Owner Trustee pursuant to Section 2 of the Participation Agreement.

"Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall have the meaning specified in the Granting Clause of the Indenture.

"Debt Amortization" with respect to any Secured Equipment Note shall mean the amortization schedule of principal payments applicable thereto.

"Debt Rate" shall mean 8.51%.

"Delayed Closing Date" shall have the meaning specified in Section 2.7 of the Participation Agreement.

"Delivery Date" shall mean with respect to each Unit, the date of the initial Lease Supplement covering such Unit, which date shall be the date such Unit is accepted by Lessor and leased to and accepted by Lessee under the Lease.

"Determination Date" shall mean, with respect to any Unit, the date specified in Schedule 5 to the Participation Agreement which is the same as or immediately precedes the date on which the Purchase Option Holder elects to purchase any Units pursuant to Section 9 of the Participation Agreement.

"Equipment" shall mean collectively those items of railroad rolling stock described in the Lease Supplements and the Indenture Supplements, together with any and all accessions, additions, improvements and replacements from time to time incorporated or installed in any item thereof which are the property of the Owner Trustee pursuant to the terms of the Lease, and "Unit" shall mean individually the various items thereof.

"Equipment Cost" shall mean, for each Unit, the purchase price therefor paid by the Owner Trustee to the Vendor pursuant to Section 2 of the Participation Agreement and as set forth in Schedule 1 to the Participation Agreement with respect to such Unit.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law.

"Event of Loss" shall have the meaning specified in Section 11.1 of the Lease.

"Excepted Property" shall mean (i) indemnity payments paid or payable by Lessee in respect of the Owner Participant or the Owner Trustee in its individual capacity, pursuant to Sections 7.1 and 7.2 of the Participation Agreement, (ii) proceeds of public liability insurance with respect to the Equipment payable as a result of insurance claims made or losses suffered by the Owner Trustee in its individual capacity, the Indenture Trustee or the Owner Participant, (iii) proceeds of insurance maintained with respect to the Equipment by the Owner Participant (whether directly or through the Owner Trustee) and not required under Section 12.1 of the Lease, (iv) payments of Supplemental Rent by Lessee in respect of any amounts payable under the Tax Indemnity Agreement, (v) fees payable to the Owner Trustee pursuant to Section 7.5(b) of the Participation Agreement, and (vi) any right to enforce the payment of any amounts described in clauses (i) through (v) above.

"Excepted Rights in Collateral" shall mean rights expressly granted to the Owner Trustee or Owner Participant to the exclusion of the Indenture Trustee under the Indenture, including, without limitation, pursuant to Section 4.04 of the Indenture.

"Excess Foreign Losses" shall have the meaning specified in the Tax Indemnity Agreement.

"Fair Market Rental Value" or "Fair Market Sales Value" with respect to any Unit of Equipment shall mean the cash rent or cash price obtainable for such Unit in an arm's length lease or sale between an informed and willing lessee or purchaser under no compulsion to lease or purchase, as the case may be, and an informed and willing lessor or seller, under no compulsion to lease or sell, as the case may be, as the same shall be specified by agreement between Lessor and Lessee (or Purchase Option Holder, in the case of the exercise of a purchase option). Lessee, upon delivering to Lessor its revocable notice of exercise of its option to renew the Lease with respect to any Unit, and the Purchase Option Holder, upon delivering to Lessor its revocable notice of its exercise of its option to purchase any Unit, shall in such notice set forth a rental value or purchase price for such Unit or Units, as the case may be. If the parties are unable to agree upon a Fair Market Rental Value and/or a Fair Market Sales Value within 30 days after delivery of the aforementioned notice by Lessee or Purchase Option Holder, as the case may be, the purchase price of such Unit or Units shall be determined by appraisal. Lessee or Purchase Option Holder, as the case may be, will within 15 days after such 30-day period provide Lessor the name of any appraiser that would be satisfactory to Lessee or Purchase Option Holder, as the case may be, and Lessor and Lessee or Purchase Option Holder, as the case may be, will consult with the intent of selecting a mutually acceptable appraiser. If a mutually acceptable appraiser is selected, the Fair Market Rental Value or the Fair Market Sales Value, as the case may be, shall be determined by such appraiser and Lessor and Lessee or Purchase Option Holder, as the case may be, shall each bear one half of the cost thereof. If Lessee or Purchase Option Holder, as the case may be, and Lessor are unable to agree upon a single appraiser within such 15-day period, Lessor will retain an appraiser within 15 days. The appraiser selected by Lessee or Purchase Option Holder, as the case may be, and the appraiser selected by Lessor shall select a consensus appraiser within 30 days. If the appraisers cannot agree on a consensus appraiser within 30 days, the Fair Market Rental Value, and/or Fair Market Sales Value shall be determined by arbitration pursuant to the commercial arbitration rules of the American Arbitration Association and the cost of such determination shall be borne equally by Lessee or Purchase Option Holder, as the case may be, and Lessor, except that Lessee or Purchase Option Holder, as the case may be, shall bear the cost of the appraiser selected by Lessee or Purchase Option Holder, as the case may be, and Lessor shall bear the cost of the appraiser selected by Lessor. If the

parties are able to agree upon a single appraiser or the two appraisers are able to agree upon a consensus appraiser, the single appraiser or the three appraisers, as the case may be, shall within 30 days make a determination of such Fair Market Rental Value and/or Fair Market Sales Value. If there shall be a panel of three appraisers, the appraisal which differs most from the other two appraisals with respect to Fair Market Rental Value and Fair Market Sales Value, each considered separately, shall be excluded and the remaining two appraisals shall be averaged and such average shall constitute the Fair Market Rental Value or Fair Market Sales Value, as appropriate. If there shall be a panel of three appraisers, Lessee or Purchase Option Holder, as the case may be, shall bear the cost of the appraiser selected by Lessee or Purchase Option Holder, Lessor shall bear the cost of the appraiser selected by Lessor, and Lessee or Purchase Option Holder, as the case may be, and Lessor shall equally share the cost of the consensus appraiser. If Lessee revokes its notice to renew the lease or the Purchase Option Holder revokes its notice to purchase any Unit, Lessee or Purchase Option Holder, as the case may be, will pay the cost of the appraisal.

"Federal Funds Rate" shall mean the rate set forth in H.15(519) for any day opposite the caption "Federal Funds (Effective)". If on a day such rate is not yet published in H.15(519), the rate for that day will be the rate set forth in Composite 3:30 P.M. Quotation for U.S. Government Securities for that day under the caption "Federal Funds/Effective Rate".

"Final Rent Payment Date" shall mean, for each Unit, the last Rent Payment Date during the Basic Term applicable to such Unit.

"Fixed Price Purchase Date" shall mean April 12, 2009 or April 16, 2012.

"Fixed Purchase Price" shall mean (i) with respect to any Unit the subject of a purchase on April 12, 2009, the amount equal to the product of 51% and the Equipment Cost for such Unit and (ii) with respect to any Unit the subject of a purchase on April 12, 2012, the amount equal to the product of 47% and the Equipment Cost for such Unit.

"Fixed Rate Renewal Term" shall have the meaning specified in Section 22.2 of the Lease.

"ICC" shall mean the Interstate Commerce Commission.

"Indemnified Person" shall have the meaning specified in Section 7.2(b) of the Participation Agreement.

"Indenture" or "Trust Indenture" shall mean the Trust Indenture and Security Agreement, dated as of October 1, 1991, between the Owner Trustee, in the capacities described therein, and Indenture Trustee, as amended, supplemented or otherwise modified from time to time, including supplementation by each Indenture Supplement pursuant thereto.

"Indenture Default" shall mean an Indenture Event of Default or an event which with notice or the lapse of time or both would become an Indenture Event of Default.

"Indenture Estate" shall have the meaning specified in the Granting Clause of the Indenture.

"Indenture Event of Default" shall have the meaning specified in Section 4.01 of the Indenture.

"Indenture Supplement" shall mean the Indenture Supplement dated the Closing Date, substantially in the form of Exhibit A to the Indenture, between the Owner Trustee, in the capacities described therein, and the Indenture Trustee, covering the Units delivered on such Closing Date.

"Indenture Trustee" shall mean Wilmington Trust Company, a Delaware corporation, not in its individual capacity, but solely as Indenture Trustee under the Indenture and its successors thereunder.

"Indenture Trustee Agreements" shall mean the Operative Agreements to which the Indenture Trustee, either in its individual or its fiduciary capacity, is a party.

"Interchange Rules" shall mean the interchange rules or supplements thereto of the Mechanical Division of the Association of American Railroads, as the same may be in effect from time to time.

"Interim Interest" shall have the meaning specified in Section 2.2(b) of the Participation Agreement.

"Interim Term" shall have the meaning specified in Section 3.1 of the Lease.

"Investment Banker" shall mean an independent investment banking institution of national standing appointed by the Lessee.

"Late Rate" shall mean the lesser of (y) the higher of 2% over the Debt Rate and 2% over the Prime Rate and (z) the maximum interest rate from time to time permitted by law.

"Lease" or "Lease Agreement" or "Equipment Lease" shall mean the Equipment Lease Agreement, relating to the Equipment, dated as of October 1, 1991, between the Owner Trustee, in the capacities described therein, as Lessor, and the Lessee as amended, supplemented or otherwise modified from time to time. The term "Lease" shall include each Lease Supplement entered into pursuant to the terms of the Lease.

"Lease Default" shall mean a Lease Event of Default or an event which with notice or lapse of time or both would become a Lease Event of Default.

"Lease Event of Default" shall mean an Event of Default under the Lease as specified in Section 14 thereof.

"Lease Supplement" shall mean a Lease Supplement dated the Closing Date, substantially in the form of Exhibit A to the Lease, between the Lessor and the Lessee, covering the Equipment delivered on the Closing Date, and any subsequent Lease Supplement entered into in accordance with the terms of the Lease.

"Lease Term" shall mean, with respect to any Unit, the Interim Term applicable to such Unit, the Basic Term applicable to such Unit and any Renewal Term applicable to such Unit then in effect.

"Lessee" shall mean Burlington Northern Railroad Company, a Delaware corporation, and any corporation which succeeds thereto by merger or consolidation or which acquires all or substantially all of the assets thereof.

"Lessee Agreements" shall mean the Operative Agreements to which Lessee is a party.

"Lessor" shall have the meaning specified in the recitals to the Lease.

"Lessor's Liens" means any Lien affecting, on or in respect of the Equipment, the Lease or the Trust Estate arising as a result of (i) claims against or affecting Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or (ii) acts or omissions of the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant, not related to the transactions contemplated by the Lease or the Participation Agreement, or not permitted under the Lease or under the Participation Agreement or in breach of any covenant or agreement of such Person set forth in any of the Operative Agreements, or (iii) taxes imposed against the Lessor (in its individual capacity or as Owner Trustee) or the Owner Participant or the Trust Estate which are not indemnified against by the Lessee pursuant to the Participation Agreement or under the Tax Indemnity Agreement, or (iv) claims against the Lessor or the Owner Participant arising out of the transfer (whether voluntary or involuntary) of the Lessor or the Owner Participant (without the consent of the Lessee, the Indenture Trustee and the Vendor) of all or any portion of their respective interests in the Equipment, the Trust Estate or the Operative Agreements, other than a transfer pursuant to Sections 10, 11, 12 or 15 of the Lease or Section 9 of the Participation Agreement.

"Lien" shall mean any mortgage, pledge, security interest, lien, encumbrance, lease, exercise of rights, claim, disposition of title or other charge of any kind on property.

"Locomotives" shall mean each of the new or remanufactured locomotives leased under the Lease Supplement(s).

"Loss of Tax Benefits" shall have the meaning specified in the Tax Indemnity Agreement.

"Majority in Interest" as of a particular date of determination shall mean, with respect to any action or decision of the holders of the Secured Equipment Notes, the holders of more than 50% in aggregate principal unpaid amount of the Secured Equipment Notes, if any, then outstanding which are affected by such decision or action, excluding any Secured Equipment Notes held by the Owner Participant or an Affiliate of the Owner Participant.

"Make-Whole Amount" shall mean, (x) with respect to any prepayment of Secured Equipment Notes prior to the expiration of the original Remaining Weighted Average Life of the Secured Equipment Notes, the amount which the Investment Banker determines as of the third Business Day prior to the prepayment date to equal the excess, if any, and (y) with respect to any prepayment of Secured Equipment Notes on or after the expiration of the original Remaining Weighted Average Life of the Secured Equipment Notes, the amount which the Investment Banker determines as of the third Business Day prior to the prepayment date to equal the excess or deficiency, as the case may be, if any, of (i) the sum of the present values of all the remaining scheduled payments of principal and interest avoided by such prepayment from the prepayment date to maturity of such Secured Equipment Notes, discounted semi-annually from the respective dates on which such payments would have been payable at a rate equal to the Treasury Rate, based on a 360-day year of twelve 30-day months, over (ii) the aggregate unpaid principal amount of such Secured Equipment Notes being prepaid.

"Modification" shall have the meaning specified in Section 9.2 of the Lease.

"Net Economic Return" shall mean the aggregate after-tax cash flow and the after-tax book yield expected by the original Owner Participant with respect to the Equipment, utilizing the multiple investment sinking fund method of analysis and the same assumptions as used by such Owner Participant (including the Tax Assumptions set forth in Section 1 of the Tax Indemnity Agreement) in making the original computations upon which its evaluation of its investment in the Equipment was based.

"Non-Severable Modification" shall mean any Modification that is not readily removable without causing material damage to the Equipment or any Unit.

"Note Payment Date" shall mean each April 16 and October 16 of each year commencing on April 16, 1992, provided that if any such date shall not be a Business Day, then "Note Payment Date" shall mean the next succeeding Business Day.

"Officer's Certificate" shall mean a certificate signed (i) in the case of a corporation by the President, any Vice President, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such corporation,

(ii) in the case of a partnership by the Chairman of the Board, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner, and (iii) in the case of a commercial bank or trust company, the Chairman or Vice Chairman of the Executive Committee or the Treasurer, any Trust Officer, any Vice President, any Executive or Senior or Second or Assistant Vice President, or any other officer or assistant officer customarily performing the functions similar to those performed by the persons who at the time shall be such officers, or to whom any corporate trust matter is referred because of his knowledge of and familiarity with the particular subject.

"Operative Agreements" shall mean the Participation Agreement, the Owner Participant Bill of Sale, the Vendor Bill of Sale, the Trust Agreement, the Owner Participant Assignment of Warranties, the Vendor Assignment of Warranties, the Lease, each Lease Supplement, the Indenture and each Indenture Supplement.

"Owner Participant" shall mean BN Leasing Corporation, a Delaware corporation and its permitted successors and assigns.

"Owner Participant Agreements" shall mean the Operative Agreements to which the Owner Participant is a party.

"Owner Participant Assignment of Warranties" shall mean the Owner Participant Assignment of Warranties, dated the Closing Date between the Owner Participant and the Vendor, as amended, supplemented or otherwise modified from time to time.

"Owner Participant Bill of Sale" shall mean each bill of sale, dated the Closing Date, from the Owner Participant to the Vendor covering the Equipment, substantially in the form of Exhibit B-2 to the Participation Agreement.

"Owner Trustee" shall mean First Security Bank of Utah, National Association, a national banking association, not in its individual capacity but solely as Owner Trustee under the Trust Agreement and its successors thereunder.

"Owner Trustee Agreements" shall mean the Operative Agreements to which the Owner Trustee, either in its individual or fiduciary capacity, is a party.

"Participation Agreement" shall mean the Participation Agreement dated as of October 1, 1991, among the Lessee, the Purchase Option Holder, the Owner Participant, the Owner Trustee, the Vendor and the Indenture Trustee.

"Parts" shall mean all appliances, parts, instruments, appurtenances, accessories, furnishings and other equipment of whatever nature which may from time to time be incorporated or installed in or attached to the Equipment.

"Past Due Rate" shall mean the lesser of (y) the higher of 2% over the Debt Rate and 2% over the Prime Rate and (z) the maximum interest rate from time to time permitted by law.

"Permitted Investments" shall mean (i) direct obligations of the United States of America and agencies thereof for which the full faith and credit of the United States is pledged; (ii) obligations fully guaranteed by the United States of America; (iii) certificates of deposit issued by, or bankers' acceptances of, or time deposits with, any bank, trust company or national banking association incorporated or doing business under the laws of the United States of America or one of the States thereof having combined capital and surplus and retained earnings of at least \$500,000,000 (including the Indenture Trustee and the Owner Trustee if such conditions are met), (iv) commercial paper of companies, banks, trust companies or national banking associations incorporated or doing business under the laws of the United States of America or one of the States thereof and in each case having a rating assigned to such commercial paper by Standard & Poor's Corporation or Moody's Investor's Service, Inc. (or, if neither such organization shall rate such commercial paper at any time, by any nationally recognized rating organization in the United States of America) equal to the highest rating assigned by such organization, and (v) purchase agreements with any financial institution having a combined capital and surplus of at least \$750,000,000 fully collateralized by obligations of the type described in clauses (i) through (iv) above, provided that if all of the above investments are unavailable, the entire amount to be invested may be used to purchase Federal Funds from an entity described in (iii) above, and provided further that no investment shall be eligible as a "Permitted Investment" unless the final maturity or date of return of such investment is 180 days or less from the date of purchase thereof.

"Permitted Liens" with respect to the Equipment and each Unit thereof, shall mean: (i) the interests of the Lessee and the Owner Trustee under the Lease and the Lease Supplements; (ii) the interest of the Lessee and any sublessee as provided in any sublease permitted pursuant to Section 8.3 of the Lease; (iii) any Liens thereon for taxes, assessments, levies, fees and other governmental and similar charges not due and payable or the amount or validity of which is being contested so long as there exists no material risk of sale, forfeiture, loss, or loss of use of any Unit; (iv) any Liens of mechanics, suppliers, materialmen, laborers, employees, repairmen and other like Liens arising in the ordinary course of business securing obligations which are not due and payable or the amount or validity of which is being contested so long as there exists no material risk of sale, forfeiture, loss, or loss of use of any Unit; (v) the Lien and security interest granted to the Indenture Trustee under and pursuant to the Indenture, and the respective rights of the Vendor, the Indenture Trustee, the Owner Participant and the Owner Trustee under the Operative Agreements; (vi) Liens arising out of any judgment or award against the Lessee (or any sublessee permitted pursuant to Section 8.3 of the Lease) with respect to which an appeal or proceeding for review is being presented in good faith and with respect to which there shall have been secured a stay of execution pending such appeal or proceeding for review; (vii) salvage rights of insurers under insurance policies maintained pursuant to Section 12; and (viii) any other Lien with respect to which the Lessee (or any sublessee) shall have provided a bond adequate in the reasonable opinion of the Owner Trustee and the Indenture Trustee.

"Person" shall mean an individual, partnership, corporation, trust, association or unincorporated organization, and a government or agency or political subdivision thereof.

"Prime Rate" shall mean the rate announced from time to time by Chase Manhattan Bank, N.A., as its prime commercial lending rate.

"Purchase Option Holder" shall mean Burlington Northern, Inc., a Delaware corporation.

"Refunding Date" shall have the meaning set forth in Section 11.2 of the Participation Agreement.

"Remaining Weighted Average Life" shall mean, as of the time of any determination thereof, the number of years obtained by dividing the then Remaining Dollar-Years of the principal amount of such Secured Equipment Notes by the aggregate principal amount of such Secured Equipment Notes. The term "Remaining Dollar-Years" of such principal amount shall mean the amount obtained by (i) multiplying (1) the amount of principal of such Secured Equipment Notes scheduled to become due on each scheduled payment date, by (2) the number of years (calculated to the nearest one-twelfth) which will elapse between the date of determination and such scheduled payment date, and (ii) totaling the products obtained in (i).

"Renewal Term" shall mean, with respect to any Unit, any term in respect of which the Lessee shall have exercised its option to renew the Lease for such Unit pursuant to Section 22.2 thereof, including any Fixed Rate Renewal Term.

"Renewal Term Commencement Date" shall mean the first day following the end of the Basic Term or the immediately preceding Renewal Term if a renewal has been effected.

"Rent" shall mean all Basic Rent and Supplemental Rent.

"Rent Payment Date" or "Payment Date" shall mean each October 16 and April 16 of each year occurring during the Lease Term, provided that if any such date shall not be a Business Day, then "Rent Payment Date" or "Payment Date" shall mean the next succeeding Business Day.

"Replacement Unit" shall mean a Unit of substantially the same utility and Fair Market Rental Value as the Unit being replaced, which shall have been leased under the Lease pursuant to Section 11.4 of the Lease.

"Required Modification" shall have the meaning specified in Section 9.1 of the Lease.

"Responsible Officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of any party contained in any Operative Agreement, the President, or any Vice President, Assistant Vice President, Treasurer, Assistant Treasurer or other officer, who in the

normal performance of his operational responsibility would have knowledge of such matters and the requirements with respect thereto.

"Scheduled Closing Date" shall have the meaning specified in Section 2.7(b) of the Participation Agreement.

"Secured Equipment Notes" shall mean and include the Secured Equipment Notes, each to be substantially in the form therefor set forth in Section 2.01 of the Indenture, issued by the Owner Trustee pursuant to Section 2.02 of the Indenture, and authenticated by the Indenture Trustee, in principal amounts and bearing interest at the rates and payable as provided in Section 2.02 of the Indenture and secured as provided in the Granting Clause of the Indenture, and shall include any Secured Equipment Notes issued in exchange therefor or replacement thereof pursuant to Section 2.07 or 2.08 of the Indenture.

"Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

"Severable Modification" shall mean any Modification that is readily removable without causing material damage to the Equipment or any Unit.

"Stipulated Loss Payment Date" shall have the meaning specified in Section 11.2 of the Lease.

"Stipulated Loss Value" payable with respect to an Event of Loss for any Unit shall mean (i) the amount determined by multiplying the Equipment Cost for such Unit by the percentage set forth in Schedule 4 to the Participation Agreement opposite the Casualty Loss Determination Date next preceding the Stipulated Loss Payment Date or, if the Stipulated Loss Payment Date occurs on a Casualty Loss Determination Date, by the percentage set forth opposite such Casualty Loss Determination Date (except that after more than 18% of the Units shall have suffered an Event of Loss (excluding those Units suffering an Event of Loss pursuant to clause (vi) of Section 11.1 of the Lease), such amount shall be determined by multiplying Lessor's Cost for such Unit by the percentage set forth in Schedule 5 to the Participation Agreement opposite the Termination Value Determination Date next preceding the Stipulated Loss Payment Date or, if the Stipulated Loss Payment Date occurs on a Termination Value Determination Date, by the percentage set forth opposite such Termination Value Determination Date, except that the provisions of this parenthetical shall

not apply to an Event of Loss pursuant to clause (vi) of Section 11.1 of the Lease), as such percentage may be adjusted as provided below; plus (ii) an amount equal to the interest accruing on the Secured Equipment Notes for the period from and including such Casualty Loss Determination Date to but excluding the Stipulated Loss Payment Date for such Unit; plus (iii) an amount equal to the interest accruing on the Equity Portion (as defined in the next sentence) at the Debt Rate for the period from and including such Casualty Loss Determination Date to but excluding such Stipulated Loss Payment Date; provided that during any Renewal Term, "Stipulated Loss Value" shall be determined as provided in Section 22.5 of the Lease. For purposes of the preceding sentence, the term "Equity Portion" shall mean an amount equal to the excess, if any, of the amount calculated pursuant to clause (i) of such preceding sentence over the aggregate unpaid principal of, and the aggregate unpaid accrued interest on, the Secured Equipment Notes as of such Casualty Loss Determination Date. Anything contained herein or in the Participation Agreement to the contrary notwithstanding, Stipulated Loss Value for such Unit (both before and after any adjustment pursuant to Section 2.6 of the Participation Agreement or any deduction pursuant to Section 3.4 of the Lease) will, under any circumstances and in any event, be an amount which, together with any other amounts required to be paid by Lessee hereunder in connection with such Event of Loss, will be at least sufficient to pay in full as of the date of payment thereof the aggregate unpaid principal of the Secured Equipment Notes issued in respect of such Unit, together with all unpaid interest thereon accrued to the date on which such amount is paid in accordance with the terms hereof.

"Subsidiary" of any Person shall mean any corporation, association or other business entity of which more than 50% (by number of votes) of the voting stock at the time outstanding shall at the time be owned, directly or indirectly, by such Person or by any other corporation, association or trust which is itself a Subsidiary within the meaning of this definition, or collectively by such Person and any one or more such Subsidiaries.

"Supplemental Rent" shall mean all amounts, liabilities and obligations (other than Basic Rent) which the Lessee is obligated to pay under the Operative Agreements to or on behalf of any of the other parties thereto, including, but not limited to, Termination Value and Stipulated Loss Value payments, and amounts, if any, payable, under Section 2.5 of the Participation Agreement

(to the extent such payment does not give rise to a rental adjustment under Section 2.6 of the Participation Agreement) by the Lessee.

"Taxes" shall have the meaning specified in Section 7.1(b) of the Participation Agreement.

"Tax Indemnity Agreement" shall mean the Tax Indemnity Agreement dated as of October 1, 1991, between the Lessee and the Owner Participant.

"Terminated Units" shall have the meaning specified in Section 10.1 of the Lease.

"Termination Date" shall have the meaning specified in Section 10.1 of the Lease.

"Termination Value" for any Unit as of any date of determination shall mean (i) the amount determined by multiplying the Equipment Cost for such Unit by the percentage set forth in Schedule 5 to the Participation Agreement opposite the Termination Value Determination Date next preceding such date of determination (or, if such date of determination is a Termination Value Determination Date, by the percentage set forth opposite such Termination Value Determination Date); plus (ii) an amount equal to the interest accruing on the unpaid principal amount of the Secured Equipment Notes issued in respect of such Unit for the period from and including such Termination Value Determination Date to but excluding the Termination Date; plus (iii) an amount equal to the interest accruing on the Equity Portion (as defined in the next sentence) at the Prime Rate for the period from and including such Termination Value Determination Date to but excluding such Termination Date. For purposes of the preceding sentence, the term "Equity Portion" shall mean an amount equal to the excess, if any, of the amount calculated pursuant to clause (i) of such preceding sentence over the aggregate unpaid principal of, and the aggregate unpaid accrued interest on, the Secured Equipment Notes as of such Termination Value Determination Date.

"Termination Value Determination Date" shall mean the date specified in Schedule 5 to the Participation Agreement which is the same as or immediately precedes the date with respect to which Termination Value is to be determined.

"Total Equipment Cost" shall mean the sum of the Equipment Cost for each Unit.

"Transaction Costs" shall have the meaning specified in Section 2.5(a) of the Participation Agreement.

"Transferee" shall have the meaning specified in Section 6.1(a) of the Participation Agreement.

"Treasury Rate" shall mean with respect to prepayment of Secured Equipment Notes, the sum of (i) a per annum rate (expressed as a semi-annual equivalent and as a decimal and, in the case of United States Treasury bills, converted to a bond equivalent yield), determined to be the per annum rate equal to the semi-annual yield to maturity for United States Treasury securities maturing on the Average Life Date of such Secured Equipment Notes, as determined by interpolation between the most recent weekly average yields to maturity for two series of United States Treasury securities, (A) one maturing as close as possible to, but earlier than, the Average Life Date of such Secured Equipment Notes and (B) the other maturing as close as possible to, but later than, the Average Life Date, in each case as published in the most recent H.15(519) (or, if a weekly average yield to maturity for United States Treasury securities maturing on the Average Life Date of such Secured Equipment Notes is reported in the most recent H.15(519), as published in H.15(519)) plus (ii) 0.5%, in the case of any prepayment which occurs on or prior to the expiration of the original Remaining Weighted Average Life of the Secured Equipment Notes, or 0.9%, in the case of any prepayment which occurs after the expiration of the original Remaining Weighted Average Life of the Secured Equipment Notes. H.15(519) means the weekly statistical release designated as such, or any successor publication, published by the Board of Governors of the Federal Reserve System. The most recent H.15(519) means the latest H.15(519) which is published prior to the close of business on the third Business Day preceding the scheduled prepayment date.

"Trust" shall mean the trust created by the Trust Agreement.

"Trust Agreement" shall mean that certain Trust Agreement, dated as of October 1, 1991, between the Owner Participant and the Owner Trustee, in the capacities described therein, as amended, supplemented or otherwise modified from time to time.

"Trust Estate" shall mean all the estate, right, title and interest of the Owner Trustee in, to and under the Equipment and the Operative Agreements including, without

limitation, all funds advanced to the Owner Trustee by the Owner Participant, all proceeds from the sale of the Secured Equipment Notes, all installments and other payments of Basic Rent, Supplemental Rent, insurance proceeds, Stipulated Loss Values, condemnation awards, Termination Values, purchase price, sale proceeds, and all other proceeds of any kind for or with respect to the Equipment and the Operative Agreements but excluding Excepted Rights in Collateral and payments related thereto.

"Trustee" shall mean each of the Owner Trustee or the Indenture Trustee and "Trustees" shall mean the Owner Trustee and the Indenture Trustee, collectively.

"Type of Equipment" shall mean each of the six types of Units of Equipment set forth in Schedule 1 to the Participation Agreement.

"Unit" shall mean each unit or item of Equipment.

"Vendor" shall mean and include each registered holder from time to time of a Secured Equipment Note issued under the Indenture.

"Vendor Assignment of Warranties" shall mean the Vendor Assignment of Warranties, dated the Closing Date between the Vendor and the Owner Trustee, as amended, supplemented or otherwise modified from time to time, substantially in the form of Exhibit C-1 to the Participation Agreement.

"Vendor Bill of Sale" shall mean the bill of sale, dated the Closing Date, from Vendor to Owner Trustee covering the Equipment, substantially in the form of Exhibit B-1 to the Participation Agreement.