

HAIGHT, GARDNER, POOR & HAVENS

195 Broadway · New York, NY 10007 · (212) 341-7000

2-037A022

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REGISTRATION NO. FILED 1425

FEB 6 1992 2:27 PM

INTERSTATE COMMERCE COMMISSION February 6, 1992

Office of the Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RE: Notice and Acknowledgement of Assignment dated as of January 31, 1992 among National Railway Equipment Company, as Lessor U.S. Concord, Inc., as Lender and Chicago and North Western Transportation Company, as Lessee

Dear Mr. Secretary:

I have enclosed four original counterparts and one certified copy of the document described below to be recorded pursuant to Section 11303 of Title 49 of the U.S. Code.

This document is a Notice and Acknowledgement of Assignment among National Railway Equipment Company, an Illinois corporation (the "Lessor"), U.S. Concord, Inc., a New York corporation (the "Lender"), and Chicago and North Western Transportation Company, a Delaware corporation (the "Lessee") dated as of January 31, 1992.

This document is a primary document.

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

Lessor

National Railway Equipment Company
14400 S. Robey Street
P.O. Box 2270
Dixmoor, Illinois 60426

Lender

U.S. Concord, Inc.
c/o Concord Merchant Funding
70 Valley Stream Parkway
Malvern, Pennsylvania 19355

FEB 6 2 27 PM '92
MOTOR OPERATING UNIT

Cheryl H. Sully

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Lessee

Chicago and North Western Transportation Company
One North Western Center
165 North Canal Street
Chicago, Illinois 60661

A description of the equipment covered by the Lease of Railroad Equipment Agreement dated as of November 1, 1991 which is assigned to the Lender pursuant to the Notice and Acknowledgment of Assignment follows:

| <u>Unit No.</u> | <u>Type</u> | <u>General Description</u> |
|-----------------|-------------|----------------------------|
| CNW 4701 | GP38-2 | General Purpose Locomotive |
| CNW 4702 | GP38-2 | General Purpose Locomotive |
| CNW 4703 | GP38-2 | General Purpose Locomotive |
| CNW 4704 | GP38-2 | General Purpose Locomotive |
| CNW 4705 | GP38-2 | General Purpose Locomotive |
| CNW 4706 | GP38-2 | General Purpose Locomotive |
| CNW 4707 | GP38-2 | General Purpose Locomotive |
| CNW 4708 | GP38-2 | General Purpose Locomotive |
| CNW 4709 | GP38-2 | General Purpose Locomotive |
| CNW 4710 | GP38-2 | General Purpose Locomotive |
| CNW 4711 | GP38-2 | General Purpose Locomotive |

A fee of US \$16.00 is enclosed. Please return the original and all counterparts not needed by the commission for recordation to Haight, Gardner, Poor & Havens, 195 Broadway, New York, NY 10007, Telephone No.: (212) 341-7000, c/o Haight, Gardner, Poor & Havens, 1300 I Street N.W., Suite 470E, Washington, DC 20005, Telephone No.: (202) 962-3880.

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

A Notice and Acknowledgment of Assignment among Chicago and North Western Transportation Company, a Delaware corporation (the "Lessee"), National Railway Equipment Company, an Illinois corporation, (the "Lessor"), and U.S. Concord, Inc., a New York Corporation (the "Lender"), assigning to the Lender the Lease of Railroad Equipment Agreement dated as of November 1, 1991 between the Lessor and the Lessee as security for the loan to be advanced by the Lender to the Lessor pursuant to a Loan and Security Agreement dated as of January 31, 1992 between the Lender and the Lessor.

A notary public has compared the copy of the enclosed document with the original counterpart and has found the copy to be

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complete and identical in all respects to the original document
and has certified it.

Very truly yours,

U.S. CONCORD, INC.

BY: HAIGHT, GARDNER, POOR & HAVENS
Special New York Counsel to U.S. CONCORD, INC.

By: Elwood E. Nassopoulos

RFL/sjg

Enclosures

a:\notic.ltr

17699
FEB 6 1992 2:30 PM
INTERSTATE COMMERCE COMMISSION

THIS NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT dated as of January 31, 1992 ("Notice and Acknowledgement") among NATIONAL RAILWAY EQUIPMENT COMPANY, an Illinois corporation ("Lessor"), U.S. CONCORD, INC., a New York corporation (together with its successors and assigns, the "Lender"), and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Lessee"),

W I T N E S S E T H:

A. Prior to the execution hereof, Lessor and Lessee have executed the Lease of Railroad Equipment Agreement dated as of November 1, 1991 (the "Lease"), pursuant to which Lessor will lease to Lessee the equipment described in Schedule A to the Lease (the "Equipment").

B. Concurrently with the execution hereof, Lessor and Lender are executing the Loan and Security Agreement dated as of January 31, 1992 (the "Security Agreement"), pursuant to which Lessor will borrow from Lender funds necessary to finance the remanufacturing of the Equipment, transfer to Lender a security interest in the Equipment, and assign to Lender Lessor's rights and interests in and under the Lease to secure Lessor's non-recourse obligation to repay the funds borrowed from Lender.

C. Lessee is willing to consent to such assignment of the Lease provided that so long as no Event of Default has occurred and is continuing under the Lease, the Lessee shall be suffered and permitted to retain full possession, enjoyment and control of the Equipment.

NOW, THEREFORE, in consideration of the mutual agreements contained in the Lease and the Security Agreement, and intending to be legally bound, the parties hereto agree as follows:

1. Definitions. Capitalized terms used herein but not otherwise defined herein are used with the respective defined meanings given to such terms in the Lease.

2. Consent of Lessee to Assignment as Security to Lender. Lessee hereby acknowledges and consents to the assignment of the Lease by Lessor to Lender under and pursuant to the Security Agreement and subject to Lessee's rights and interests created by or under the Lease, including but not limited to, Lessee's right, so long as no Event of Default has occurred and is continuing under the Lease, to quiet use, enjoyment and possession of the Equipment under the Lease agrees for the benefit of Lender as follows:

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(a) To make each payment of quarterly rental and all other sums due under the Lease, including interest thereon for late payment thereof ("Rent") assigned thereby directly to Lender by paying to Lender by wire transfer in immediately available funds on the day when due pursuant to written instructions of the Lender or by one or more checks drawn on any bank or trust company (selected by Lessee and reasonably acceptable to Lender) having a banking office in New York, New York, made payable to Lender and delivered to Lender at the address indicated in Section 2(h) hereof at least two Business Days before the date such payment is due, so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid;

(b) Each quarterly installment of rent provided for in Section 3 of the Lease ("Basic Rent") and each payment of Casualty Value payable under the Lease shall be, under any circumstances and in any event, payable in accordance with the terms of the Lease;

(c) Not to seek the recovery of any payment made to Lender pursuant to the Lease and this Notice and Acknowledgement once such payment has been made;

(d) That so long as any indebtedness of Debtor to Lender secured under the terms of the Security Agreement shall be outstanding and unpaid, all rights of Lessor with respect to the Lease and the Equipment or any part thereof shall be exercisable by Lender, as assignee and secured party or lienholder, subject to the terms of the Lease and this Notice and Acknowledgement.

(e) At the request of the Lender, to execute any financing statements, continuation statements or other documents necessary to create, perfect, protect and preserve the priority security interest acquired, or intended to be acquired, by Lender under the Security Agreement, subject to Lessee's leasehold interest under the Lease until, all obligations of Debtor in connection with the transactions contemplated hereby and thereby shall have been fulfilled;

(f) To execute and deliver such other documents as Lessor or Lender may reasonably request;

(g) That any amendment to, or any waiver, discharge or termination of, any term or provision of the Lease (or any consent of Lessor required thereunder) shall also require the written consent of Lender;

(h) That Lessee will deliver to Lender at c/o Concord Merchant Funding, 70 Valley Stream Parkway, Malvern, Pennsylvania 19355, Attention: Robert M. Bauersmith, Vice President, Telecopier No.: (215) 644-4480, with a copy to: Concord Leasing, Inc., 40 Richards Avenue, Norwalk, Connecticut 06856, Attention: William T. Whelan, Vice President, Telecopier No.: (203) 866-5409, a copy of all notices required to be delivered to Lessor under the Lease concurrently with the delivery of such notices to Lessor;

(i) That Lender shall be named as additional insured with respect to all insurance required to be maintained by Lessee pursuant to Section 7 of the Lease;

(j) That each of the representations, warranties and indemnities of Lessee set forth in the Lease, are hereby incorporated by reference herein and are deemed to apply to Lender as well as Lessor as fully and to the extent and with the force and effect as if set forth in full in this Section 2(j) and all such representations and warranties were true and correct when given and remain true and correct on the date hereof; and

(k) For the purpose of applying Section 6 of the Lease to Lender, Lender and its successors, assigns, agents, servants, employees and officers shall each be an Indemnified Person, provided, however, that Lender and its successors, assigns, agents, servants, employees and officers shall for the entirety of said Section 6 of the Lease be subject to all exclusions to indemnification therein contained and such indemnification shall be limited to rights arising under the Lease and this Notice and Acknowledgement and not under the Security Agreement.

3. Amendment to the Lease. The parties hereto agree that the Lease is hereby amended as follows:

The first sentence of the second paragraph of Section 12 of the Lease, entitled "Possession and Use", is hereby deleted in its entirety and the following phrase is hereby substituted therefor:

"The Equipment will be used by the Lessee only upon lines or railroad owned or operated by a railroad company or companies incorporated in the United States of America (or any State thereof or the District of Columbia) or over lines upon which such railroad company or companies have trackage rights or rights for operation of their trains, and upon connecting with

other carriers in the usual interchange of traffic in the continental United States. The Equipment will be located at all times only in the United States, notwithstanding any provision of the Lease or any other agreement; provided, however, with the prior express written consent of the Lender, and subject to such conditions as Lender may require, the Equipment may be used in Canada or Mexico for a period of time not exceeding a total of ninety (90) days in any calendar year."

4. No Further Amendments. Except as expressly modified or amended herein, all of the terms, covenants and conditions of the Lease shall remain unamended and in full force and effect.

5. Governing Law and Submission to Jurisdiction. This Notice and Acknowledgement shall be governed by and construed in accordance with the laws of the State of New York.

6. Counterparts. This Notice and Acknowledgement may be executed in two or more counterparts, which together shall constitute one and the same instrument.

7. WAIVER OF JURY TRIAL. BY ITS SIGNATURE BELOW WRITTEN EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS NOTICE AND ACKNOWLEDGEMENT OF ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

[Rest of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Notice and Acknowledgement to be duly executed as of the date first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

BY: *Richard F. Koritz*
Name: Richard F. Koritz
Title: Asst. Secretary

BY: *Lawrence J. Beal*
Name: Lawrence J. Beal
Title: President

ATTEST:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

U.S. CONCORD, INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

(WASHINGTON, D.C.)

The undersigned states that she has read the attached document and that the document attached is identical to the complete and original Notice and Acknowledgement of Assignment of Lease.

DATED: Jan. 5, 1992

*Diana K. Page
Notary Public*

STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

On this 30th day of January, 1992, before me personally appeared Lawrence J. Beal, to me personally known, who being by me duly sworn, says that he resides at 14400 So. Robey, Dixmoor, IL and he is the President of NATIONAL RAILWAY EQUIPMENT COMPANY, that said instrument was signed 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.

Sarah J. Goodnight
Notary Public

OFFICIAL SEAL
SARAH J. GOODNIGHT
NOTARY PUBLIC STATE OF ILLINOIS
MY COMMISSION EXP. MAR. 21, 1994
(SEAL)

My Commission expires: 3/21/94

SP

IN WITNESS WHEREOF, the parties hereto have caused this Notice and Acknowledgement to be duly executed as of the date first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By: *K. A. Dombrowski*
Name: K. A. DOMBROWSKI
Title: ASSISTANT SECRETARY

By: *John E. Voldseth*
Name: JOHN E. VOLDSETH
Title: VICE PRESIDENT-FINANCE

ATTEST:

U.S. CONCORD, INC.

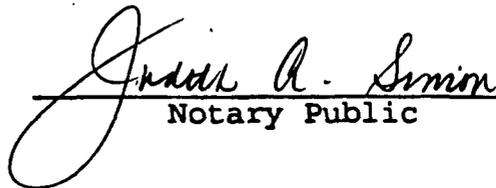
By: _____
Name:
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By: _____
Name:
Title:

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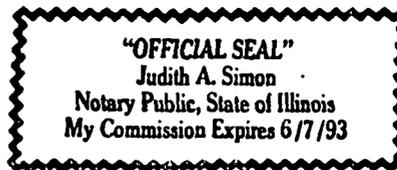
STATE OF ILLINOIS)
) SS.:
COUNTY OF COOK)

On this 3rd day of February , 1992, before me personally appeared JOHN E. VOLDSETH , to me personally known, who being by me duly sworn, say that he resides at 426 N. PROSPECT AVE., PARK RIDGE, ILLINOIS 60068 and he is the Vice President-Finance of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that said instrument was signed 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.


Notary Public

(SEAL)

My Commission expires:



SP

IN WITNESS WHEREOF, the parties hereto have caused this Notice and Acknowledgement to be duly executed as of the date first above written.

ATTEST:

NATIONAL RAILWAY EQUIPMENT COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

ATTEST:

U.S. CONCORD, INC.

By: John T. Costa
Name: John T. Costa
Title: Assistant Vice President

By: W.T. Whelan
Name: W.T. WHELAN
Title: V.P.

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