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INTERSTATE COMMERCE COMMISSION

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EXECUTED IN 12 COUNTERPARTS OF  
WHICH THIS IS COUNTERPART No. 5

**RECONSTRUCTION AND CONDITIONAL SALE  
AGREEMENT**

Dated as of February 1, 1972

AMONG

**THE FIRST PENNSYLVANIA BANKING AND  
TRUST COMPANY, *as Agent***

**CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY**

AND

**BANKERS TRUST COMPANY, *as Trustee***

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**RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT** dated as of February 1, 1972, among THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY (hereinafter called the Vendor), as Agent under a Finance Agreement (hereinafter called the Finance Agreement) dated as of February 1, 1972, BANKERS TRUST COMPANY, as Trustee under Trust Agreement dated as of January 12, 1972, as amended by an amendment thereto dated as of February 1, 1972 (said Trust Agreement as so amended being hereinafter called the Trust Agreement and said Trustee, acting solely as trustee and not otherwise, and whose obligations under this Agreement are limited as provided in Articles 3 and 21 hereof being hereinafter called the Trustee), with CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as beneficiary (hereinafter called the Beneficiary), and CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (hereinafter called the Railroad).

WHEREAS the Vendor has acquired or will acquire security title to certain railroad equipment (hereinafter called the Hulks) for the purpose of causing the same to be reconstructed as described herein and thereupon selling its interest in the same to the Trustee, and the Trustee has agreed to purchase the Hulks as so reconstructed (hereinafter called the Equipment); and

WHEREAS the Trustee has acquired or will acquire all right, title and interest in the Hulks from North Western Leasing Company (hereinafter called the Seller), a subsidiary of the Railroad, pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement), dated January 12, 1972, and will subject the same to a security interest in favor of the Vendor for the purpose of causing the Hulks to be reconstructed; and

WHEREAS, the Hulks have been or will be delivered to the Railroad, and the Railroad has agreed to cause the Hulks to be rebuilt as required hereby to enable delivery of the Equipment to be made to the Trustee in accordance herewith; and

WHEREAS the Trustee and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease) substantially in the form annexed hereto as Annex A, leasing the Equipment to the Railroad, subject to this Agreement, which Lease will be filed with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act concurrently with the filing of this Agreement thereunder; and

WHEREAS the Railroad, in order to obtain the use of the Equipment and to induce the Vendor to enter into this Agreement, is willing to guarantee to the Vendor the due and punctual payment of certain sums payable by, and the due and punctual performance of all other obligations of, the Trustee under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

Now, THEREFORE, in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Railroad will cause the Hulks to be reconstructed at its plant in Oelwein, Iowa, into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Trustee on behalf of the Vendor, and the Trustee will accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be

standard gauge railroad locomotives reconstructed in accordance with the specifications of the Trustee referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Trustee, the Vendor and the Railroad (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Railroad warrants to the Vendor and the Trustee that the design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Inspection and Delivery.* The Railroad will deliver the units of the Equipment to the Trustee at the Railroad's plant in Oelwein, Iowa, freight charges, if any, prepaid.

The Railroad's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Railroad's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 31, 1972, shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately

preceding sentence or pursuant to Article 3, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. The Vendor and the Trustee shall have no obligation to accept and pay for any Equipment so excluded from this Agreement, but may, in lieu thereof, assign all their right, title and interest therein to the Railroad. In such case, the Railroad will pay the Seller for the cost of the Hulks as specified in Schedule A hereto and will indemnify and hold harmless the Vendor and the Trustee against all liability therefor.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Trustee (who may be employees of the Railroad) and the Railroad shall grant to such authorized inspectors reasonable access to its plant. The Railroad agrees to inspect all materials used in the reconstruction of the Equipment in accordance with the standard quality control practices of the Railroad. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Trustee (who may be the Railroad or an employee of the Railroad) shall execute and deliver a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Trustee and the Railroad on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; *provided, however*, that the Railroad shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof. Such Certificate of Acceptance shall be deemed to be the acceptance by the Trustee and by the Railroad as

lessee under the Lease and shall satisfy all requirements of the Vendor under this Agreement for a Certificate of Acceptance.

ARTICLE 3. *Acquisition Price and Payment of Purchase Price.* The cost of the Hulks (the "Hulk Purchase Price") and the estimated base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The term "Reconstruction Cost", as used herein, shall not exceed the lesser of the actual cost to the Railroad (including reasonable allocation of overhead) of doing the reconstruction work or the amount set out as the estimated base reconstruction cost in Schedule A. The term "Purchase Price", as used herein, means the sum of the Hulk Purchase Price and the Reconstruction Cost. On any Closing Date (as hereinafter defined in this Article 3) the aggregate of the amounts (hereinafter called the Acquisition Price) as set forth in the invoice or invoices for the units of Equipment for which settlement has theretofore been or is then being made under this Agreement shall not exceed \$6,500,000.

For the purpose of settlement therefor, the Equipment shall be divided into not more than two groups of units of the Equipment (each such group being hereinafter called a Group) unless the Trustee, the Vendor and the Railroad shall otherwise agree; *provided, however*, that the aggregate Purchase Price of all Groups settled for prior to November 1, 1972 shall not exceed \$3,250,000. The term "Closing Date" with respect to any Group shall mean such date (not earlier than May 1, 1972 and not later than December 31, 1972, such later date being hereinafter called the Cut-Off Date), occurring not less than seven business days nor more than ten business days following presentation by the Railroad to the Trustee of the invoice or invoices and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered

to the Trustee and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, holidays and any other day on which banking institutions in Philadelphia, Pennsylvania, Chicago, Illinois, or New York, New York, are authorized to remain closed.

The Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On the Closing Date with respect to each Group an amount equal to 20% of the aggregate Purchase Price of such Group; and

(b) In 24 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price of all Groups being herein called the Conditional Sale Indebtedness) shall be payable on May 1, 1973, and subsequent instalments shall be payable semiannually thereafter on November 1 and May 1 of each year to and including November 1, 1984 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of  $8\frac{3}{4}\%$  per annum and such interest shall be pay-

able, to the extent accrued, on May 1 and November 1 of each year, commencing November 1, 1972. The principal amount of Conditional Sale Indebtedness payable on each of the 24 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each of the 24 semiannual Payment Dates shall be substantially equal and such 24 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness; *provided, however*, that for the purpose of calculating the principal amount of Conditional Sale Indebtedness payable on the first Payment Date, it shall be assumed that interest has accrued for a full six months' period on the entire Conditional Sale Indebtedness. The Trustee will furnish to the Vendor and the Railroad promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Trustee will pay interest at the rate of  $9\frac{3}{4}\%$  per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be made by the Trustee to the Vendor by wire in Federal funds. Except as provided in Article 6 hereof, the Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3)

that the Trustee will furnish to the Vendor that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that such portion plus an amount equal to the balance of such Purchase Price shall be paid to the Railroad and the Seller, as their interests may appear, by the Vendor as full payment of the Acquisition Price to them.

The Vendor shall be under no obligation to make payment to the Railroad or the Seller unless there shall have theretofore been delivered to the Vendor the following documents, in form and substance satisfactory to it and its special counsel hereinafter mentioned:

(a) The Certificate or Certificates of Acceptance with respect to the Equipment in the Group;

(b) Invoice of the Railroad for the reconstruction of the Equipment in the Group and of the Seller for the Hulks so reconstructed accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein and an acceptance of said invoice by the Trustee;

(c) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Vendor and the Investors referred to in the Finance Agreement, dated as of such Closing Date, addressed to the Vendor and such Investors, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Railroad and the Vendor and is a valid instrument binding upon such parties, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) at the time of delivery of the units of the Equipment in the Group by the Railroad hereunder, such units were free of all claims, liens,

security interests and other encumbrances of the Railroad or the Seller or of anyone claiming through the Railroad or the Seller, except for their rights under this Agreement, the Lease or the Hulk Purchase Agreement, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, this Agreement or the Lease, or if any approval is necessary, it has been obtained, (v) this Agreement and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor hereunder in any State of the United States of America or the District of Columbia and (vi) registration of this Agreement or any interests therein held by the Investors under the Finance Agreement is not required under the Securities Act of 1933, as amended; and said opinion shall cover such other matters as shall be reasonably requested by the Vendor;

(d) A favorable opinion of Messrs. White & Case, counsel for the Trustee, dated as of such Closing Date, addressed to the Vendor and such Investors, stating that the Trust Agreement, this Agreement and the Lease have been duly executed and delivered by the Trustee;

(e) A favorable opinion of Messrs. Mayer, Brown & Platt, counsel for the Beneficiary, dated as of such Closing Date, addressed to the Vendor and such Investors, stating that the Trust Agreement has been duly authorized, executed and delivered by the Beneficiary;

(f) A favorable opinion of Messrs. White & Case, special counsel for the Beneficiary, dated as of such

the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Trustee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of independent counsel for the Vendor) or unless the Trustee shall have approved the payment thereof.

ARTICLE 6. *Maintenance and Repair; Casualty Occurrences; Insurance.* The Trustee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendor and the Trustee or the Railroad, irreparably damaged or economically obsolete, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Trustee shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Trustee may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the next succeeding May or November 1, as the case may be, the Trustee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Trustee will promptly furnish to the Vendor and the Railroad a revised schedule of payments of principal and interest thereafter to be made, in such number of

counterparts as the Agent may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, the Vendor's security title shall cease and the Trustee shall have absolute right to the possession of, title to and property in such unit without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insur-

ance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it.

ARTICLE 7. *Obligations of Railroad, as Guarantor.* The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Trustee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Trustee under this Agreement (except for the sums payable by the Trustee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Trustee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Trustee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Trustee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss.:

On this *27<sup>th</sup>* day of *April*, 1972, before me personally appeared *W. M. KRAEGER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elozabeth J. Sabera*  
 .....  
 Notary Public

Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires March 1, 1976

[NOTARIAL SEAL]

STATE OF ILLINOIS }  
 COUNTY OF COOK } ss.:

On this *9<sup>th</sup>* day of *May*, 1972, before me personally appeared *J. M. BUTLER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*F. J. Brog*  
 .....  
 Notary Public

My Commission Expires May 19, 1974

[NOTARIAL SEAL]

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this *7th* day of *MAY*, 1972, before me personally appeared *T. B. Peterson* to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Phyllis Buchner*  
Notary Public

[NOTARIAL SEAL]

PHYLLIS BUCHNER  
Notary Public, State of New York  
No. 21 547 715  
Qualified to perform duties  
Certificate of the State of New York  
County of New York  
1973

**SCHEDULE A**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

\*To be assigned to reconstructed units (Equipment)

## SCHEDULE A—(Continued)

### Specifications

The Railroad will repair and reconstruct the Hulks in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L brake equipment,
- (8) Modification of car body to incorporate low profile front hood (SD-7, GP-7, GP-9R and GP-9 units only),
- (9) Installation of snow plows to front end of unit (SD-7, GP-7, GP-9R and GP-9 units only),
- (10) Removal of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (11) Rebuilding of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (12) Installation of rebuilt Cummins diesel engines and 440 volt alternator (F-7 units only),
- (13) Installation of chemical toilet units,
- (14) Overhauling of trucks,
- (15) Repairing of unit body and underframe as required, and
- (16) Scraping, painting and stenciling.

or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Trustee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Trustee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Trustee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Railroad shall not otherwise alter or affect

the Vendor's rights or the Trustee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee and to collect such judgment out of the income and proceeds from the Equipment in the manner and subject to the limitations of Article 3 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee or the Railroad, as the case may be, to the extent of their respective interests therein.

The Trustee will, subject to the limitations of Articles 3 and 21 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

*ARTICLE 17. Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any

the Vendor directly and paid by the Vendor, the Trustee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Trustee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of independent counsel for the Vendor) or unless the Trustee shall have approved the payment thereof.

ARTICLE 6. *Maintenance and Repair; Casualty Occurrences; Insurance.* The Trustee agrees that, at its own cost and expense, it will cause each unit of the Equipment to be maintained in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendor and the Trustee or the Railroad, irreparably damaged or economically obsolete, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Trustee shall, within 14 days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Trustee may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the next succeeding May or November 1, as the case may be, the Trustee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Trustee will promptly furnish to the Vendor and the Railroad a revised schedule of payments of principal and interest thereafter to be made, in such number of

counterparts as the Agent may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Trustee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, the Vendor's security title shall cease and the Trustee shall have absolute right to the possession of, title to and property in such unit without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Trustee, will execute and deliver to the Trustee, at the expense of the Trustee, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Trustee to the Equipment.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insur-

ance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on equipment owned by it.

ARTICLE 7. *Obligations of Railroad, as Guarantor.* The Railroad, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Trustee under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Trustee under this Agreement (except for the sums payable by the Trustee pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Trustee in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Trustee of any of the rights of the Vendor hereunder.

The Railroad agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the last paragraph of Article 3 hereof or any other circumstances which might otherwise limit the recourse of the Vendor to the Trustee. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss.:

On this *27<sup>th</sup>* day of *April*, 1972, before me personally appeared *W. M. KRAEGER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elojalech J. Sabera*  
 .....  
 Notary Public

[NOTARIAL SEAL]

Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires March 1, 1976

STATE OF ILLINOIS }  
 COUNTY OF COOK } ss.:

On this *9<sup>th</sup>* day of *May*, 1972, before me personally appeared *J. M. BUTLER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*F. J. Brog*  
 .....  
 Notary Public

[NOTARIAL SEAL]

My Commission Expires May 19, 1974

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this *7th* day of *MAY*, 1972, before me personally appeared *T. B. Peterson* to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Phyllis Buchner*  
Notary Public

[NOTARIAL SEAL]

PHYLLIS BUCHNER  
Notary Public, State of New York  
No. 21 547 715  
Qualified to perform duties  
Certificate of the State of New York  
Commission Expires 12/31/73

**SCHEDULE A**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

\*To be assigned to reconstructed units (Equipment)

## SCHEDULE A—(Continued)

### Specifications

The Railroad will repair and reconstruct the Hulks in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L brake equipment,
- (8) Modification of car body to incorporate low profile front hood (SD-7, GP-7, GP-9R and GP-9 units only),
- (9) Installation of snow plows to front end of unit (SD-7, GP-7, GP-9R and GP-9 units only),
- (10) Removal of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (11) Rebuilding of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (12) Installation of rebuilt Cummins diesel engines and 440 volt alternator (F-7 units only),
- (13) Installation of chemical toilet units,
- (14) Overhauling of trucks,
- (15) Repairing of unit body and underframe as required, and
- (16) Scraping, painting and stenciling.

or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Trustee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Trustee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Trustee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Railroad shall not otherwise alter or affect

the Vendor's rights or the Trustee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee and to collect such judgment out of the income and proceeds from the Equipment in the manner and subject to the limitations of Article 3 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee or the Railroad, as the case may be, to the extent of their respective interests therein.

The Trustee will, subject to the limitations of Articles 3 and 21 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any

jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee and the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Trustee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Trustee and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedule hereto, exclusively and completely states the rights of the Vendor, the Trustee and the Railroad with respect to the Hulks and the Equipment and supersedes all other agreements, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Trustee and the Railroad.

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendor, at Fifteenth & Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention: Corporate Trust Department,

(b) to the Trustee, at 16 Wall Street, New York, N. Y. 10015, Attention: Corporate Trust Department, with a copy to the Beneficiary at 231 South La Salle Street, Chicago, Illinois 60693, Attention: Terrance J. Bruggeman,

(c) to the Railroad, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Vice President—Finance,

(d) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, and to the Railroad, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Trustee, Beneficiary or the Railroad, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Trustee under the first paragraph of Article 6, the last paragraph of Article 11, the fourth paragraph of Article 14, and under Articles 5, 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Trustee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee, except its agreement set forth in the next suc-

ceeding paragraph, are made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding the Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and then solely to the extent that the Trust Estate consists of "income and proceeds from the Equipment", as defined in Article 3 hereof, and this Agreement is executed and delivered by the Trustee not in its own right but solely in the exercise of the powers expressly conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee or the Beneficiary on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Trustee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to the Trust Estate and then solely to the extent that the Trust Estate consists of "income and proceeds from the Equipment", as defined in Article 3, hereof for satisfaction of the same.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of February 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

THE FIRST PENNSYLVANIA BANKING  
AND TRUST COMPANY,

[CORPORATE SEAL]

*as Agent*

by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*

CHICAGO AND NORTH WESTERN  
RAILWAY COMPANY,

[CORPORATE SEAL]

by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY,  
as Trustee under a Trust  
Agreement dated as of Janu-  
ary 12, 1972, as amended

by ..... *Metterson* .....  
*Vice President*

[CORPORATE SEAL]  
Attest:

..... *Moore* .....  
*Assistant Secretary*

connection with any such proceedings (whether or not subject to ratification) in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) The Trustee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Trustee and the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Railroad set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate (and the Trustee and the Railroad each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate of  $9\frac{3}{4}\%$  per annum, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the income and proceeds from the Equipment in the manner and subject to the limitations of Article 3 hereof, or the

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss.:

On this *27<sup>th</sup>* day of *April*, 1972, before me personally appeared *W. M. KRAEYER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elojalech J. Sabera*  
 .....  
 Notary Public

Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires March 1, 1976

[NOTARIAL SEAL]

STATE OF ILLINOIS }  
 COUNTY OF COOK } ss.:

On this *9<sup>th</sup>* day of *May*, 1972, before me personally appeared *J. M. BUTLER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*F. J. Brog*  
 .....  
 Notary Public

My Commission Expires May 19, 1974

[NOTARIAL SEAL]

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this *7th* day of *MAY*, 1972, before me personally appeared *T. B. Peterson* to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Phyllis Buchner*  
Notary Public

[NOTARIAL SEAL]

PHYLLIS BUCHNER  
Notary Public, State of New York  
No. 21 547 715  
Qualified to perform duties  
Certificate of the State of New York  
Commission Expires 12/31/73

**SCHEDULE A**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

\*To be assigned to reconstructed units (Equipment)

## SCHEDULE A—(Continued)

### Specifications

The Railroad will repair and reconstruct the Hulks in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L brake equipment,
- (8) Modification of car body to incorporate low profile front hood (SD-7, GP-7, GP-9R and GP-9 units only),
- (9) Installation of snow plows to front end of unit (SD-7, GP-7, GP-9R and GP-9 units only),
- (10) Removal of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (11) Rebuilding of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (12) Installation of rebuilt Cummins diesel engines and 440 volt alternator (F-7 units only),
- (13) Installation of chemical toilet units,
- (14) Overhauling of trucks,
- (15) Repairing of unit body and underframe as required, and
- (16) Scraping, painting and stenciling.

or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Trustee and the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Trustee and the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Trustee or the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Trustee or the Railroad shall not otherwise alter or affect

the Vendor's rights or the Trustee's or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Trustee's or the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Trustee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Trustee and to collect such judgment out of the income and proceeds from the Equipment in the manner and subject to the limitations of Article 3 hereof. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Trustee or the Railroad, as the case may be, to the extent of their respective interests therein.

The Trustee will, subject to the limitations of Articles 3 and 21 hereof, pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

*ARTICLE 17. Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any

jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Trustee and the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Trustee and the Railroad, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Trustee and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Trustee and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedule hereto, exclusively and completely states the rights of the Vendor, the Trustee and the Railroad with respect to the Hulks and the Equipment and supersedes all other agreements, oral or written, with respect to the Hulks and the Equipment except the Hulk Purchase Agreement. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Trustee and the Railroad.

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendor, at Fifteenth & Chestnut Streets, Philadelphia, Pennsylvania 19101, Attention: Corporate Trust Department,

(b) to the Trustee, at 16 Wall Street, New York, N. Y. 10015, Attention: Corporate Trust Department, with a copy to the Beneficiary at 231 South La Salle Street, Chicago, Illinois 60693, Attention: Terrance J. Bruggeman,

(c) to the Railroad, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Vice President—Finance,

(d) to any assignee of the Vendor, or of the Trustee, at such address as may have been furnished in writing to the Trustee, or the Vendor, as the case may be, and to the Railroad, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Trustee, Beneficiary or the Railroad, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Trustee under the first paragraph of Article 6, the last paragraph of Article 11, the fourth paragraph of Article 14, and under Articles 5, 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Lease. The Railroad shall be liable in respect of its guaranty hereunder for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Trustee shall not have any responsibility for the Railroad's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Railroad's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Trustee, except its agreement set forth in the next suc-

ceeding paragraph, are made and intended not as personal representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding the Trustee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and then solely to the extent that the Trust Estate consists of "income and proceeds from the Equipment", as defined in Article 3 hereof, and this Agreement is executed and delivered by the Trustee not in its own right but solely in the exercise of the powers expressly conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Trustee or the Beneficiary on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Trustee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however,* that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to the Trust Estate and then solely to the extent that the Trust Estate consists of "income and proceeds from the Equipment", as defined in Article 3, hereof for satisfaction of the same.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of February 1, 1972, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

THE FIRST PENNSYLVANIA BANKING  
AND TRUST COMPANY,

[CORPORATE SEAL]

*as Agent*

by .....  
*Vice President*

Attest:

.....  
*Assistant Secretary*

CHICAGO AND NORTH WESTERN  
RAILWAY COMPANY,

by .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY,  
as Trustee under a Trust  
Agreement dated as of Janu-  
ary 12, 1972, as amended

by ..... *Metterson* .....  
*Vice President*

[CORPORATE SEAL]  
Attest:

..... *Moore* .....  
*Assistant Secretary*

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss.:

On this *27<sup>th</sup>* day of *April*, 1972, before me personally appeared *W. M. KRAEGER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Elojalech J. Sabera*  
 .....  
 Notary Public

Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires March 1, 1976

[NOTARIAL SEAL]

STATE OF ILLINOIS }  
 COUNTY OF COOK } ss.:

On this *9<sup>th</sup>* day of *May*, 1972, before me personally appeared *J. M. BUTLER*, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*F. J. Brog*  
 .....  
 Notary Public

My Commission Expires May 19, 1974

[NOTARIAL SEAL]

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this *7th* day of *MAY*, 1972, before me personally appeared *T. B. Peterson* to me personally known, who, being by me duly sworn, says that he is a Vice President of BANKERS TRUST COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Phyllis Buchner*  
Notary Public

[NOTARIAL SEAL]

PHYLLIS BUCHNER  
Notary Public, State of New York  
No. 21 547 715  
Qualified to perform duties  
Certificate of the State of New York  
County of New York  
1973

**SCHEDULE A**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

\*To be assigned to reconstructed units (Equipment)

## SCHEDULE A—(Continued)

### Specifications

The Railroad will repair and reconstruct the Hulks in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L brake equipment,
- (8) Modification of car body to incorporate low profile front hood (SD-7, GP-7, GP-9R and GP-9 units only),
- (9) Installation of snow plows to front end of unit (SD-7, GP-7, GP-9R and GP-9 units only),
- (10) Removal of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (11) Rebuilding of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (12) Installation of rebuilt Cummins diesel engines and 440 volt alternator (F-7 units only),
- (13) Installation of chemical toilet units,
- (14) Overhauling of trucks,
- (15) Repairing of unit body and underframe as required, and
- (16) Scraping, painting and stenciling.

**LEASE OF RAILROAD EQUIPMENT**

**Dated as of February 1, 1972**

**between**

**BANKERS TRUST COMPANY,  
as Trustee,**

**and**

**CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY**

**[Covering 45 Rebuilt Locomotives]**

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## INDEX

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	PAGE
SECTION 1. DEFINITIONS .....	2
SECTION 2. LEASE OF UNITS; TERM .....	5
SECTION 3. RENT .....	6
SECTION 4. IDENTIFICATION MARKS .....	7
SECTION 5. TAXES .....	8
SECTION 6. LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE .....	15
SECTION 7. INSURANCE .....	18
SECTION 8. REPORTS AND INSPECTION .....	20
SECTION 9. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES .....	22
SECTION 10. MAINTENANCE AND OPERATION .....	22
SECTION 11. REPLACEMENT OF PARTS; ALTER- ATIONS, MODIFICATIONS AND ADDI- TIONS .....	23
SECTION 12. INDEMNIFICATION AND EXPENSES ....	25
SECTION 13. EVENTS OF DEFAULT .....	27
SECTION 14. REMEDIES .....	29
SECTION 15. RETURN OF UNITS .....	33
SECTION 16. LESSEE'S REPRESENTATIONS AND WAR- RANTIES .....	35
SECTION 17. LIENS .....	36

	PAGE
SECTION 18. SUBLEASE, POSSESSION AND USE BY LESSEE .....	37
SECTION 19. ASSIGNMENT .....	39
SECTION 20. NO SET-OFF, COUNTERCLAIM, ETC. ..	40
SECTION 21. PURCHASE OPTION .....	40
SECTION 22. RECORDING .....	42
SECTION 23. LESSOR'S RIGHT TO PERFORM FOR LESSEE .....	43
SECTION 24. FURTHER ASSURANCES .....	43
SECTION 25. SUCCESSOR TRUSTEE; CO-TRUSTEE ....	44
SECTION 26. CONDITIONS TO OBLIGATIONS OF LESSOR	44
SECTION 27. NOTICES .....	52
SECTION 28. MISCELLANEOUS .....	52

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** dated as of February 1, 1972, between CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (herein called "Lessee") and BANKERS TRUST COMPANY, a New York banking and trust company, as Trustee under Trust Agreement hereinafter referred to (herein called "Lessor");

WHEREAS, the Lessor has purchased certain used railroad locomotives from NORTH WESTERN LEASING COMPANY (herein called "Seller") under a Hulk Purchase Agreement dated January 12, 1972 and has entered into a Rehabilitation Agreement dated as of January 12, 1972 with CHICAGO AND NORTH WESTERN RAILWAY COMPANY (herein, in such capacity, called "Railroad") for rehabilitation in the manner therein described.

WHEREAS, the Lessor has transferred to FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent (herein called "Vendor") the security title in and to the Units;

WHEREAS, the Vendor has entered into a Reconstruction and Conditional Sale Agreement (herein called "Security Documents") dated as of February 1, 1972 with the Trustee and the Railroad restating the agreements as to the reconstruction and rehabilitation of the Units and providing for the reservation of security title in the Units in the Vendor, which obligation has been guaranteed by the Lessee; and

WHEREAS, the Lessee desires to lease all of the Units (more particularly described in Schedule A hereto) or such lesser number as are delivered and accepted and settled for under the Security Documents on or prior to December 31, 1972 at the rentals and upon the terms and conditions hereinafter provided;

SECTION 1. DEFINITIONS. The following terms shall, unless the context otherwise requires, have the following meanings for all purposes of this Lease.

“Acceptance Date” for a Unit shall mean the date as of which Lessee executes and delivers to the Lessor a Certificate of Acceptance with respect to such Unit.

“Acquisition Price” for any Unit shall have the meaning as set forth in Article 3 of the Security Documents provided the aggregate amount of the Acquisition Price for all the Units shall not exceed \$6,500,000.

“Affiliate” shall mean any person determined to be affiliated with the Lessee pursuant to the Interstate Commerce Act.

“Appraiser” shall have the meaning specified in Section 21 hereof.

“Bank” shall mean Continental Illinois National Bank and Trust Company of Chicago, and its successors and assigns.

“Basic Rent” shall mean the aggregate rent payable pursuant to Section 3(b) hereof with respect to each Unit for the period from November 1, 1972 to the end of the Lease Term for such Unit.

“Business Day” shall mean any day other than a Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the City of New York are authorized by law to close.

“Casualty Occurrence” shall mean any of the following events with respect to any Unit: (i) such Unit shall be or become worn out, lost, stolen, destroyed, or in the opinion of the Vendor and the Lessor or Lessee becomes irreparably damaged or economically obsolete from any cause whatsoever; or (ii) such Unit shall be taken or requisitioned by condemnation or otherwise.

"Casualty Value" shall mean for each Unit an amount determined in accordance with Section 6 hereof.

"Certificate of Acceptance" shall mean an instrument substantially in the form of Exhibit A attached hereto to be duly completed and executed by Lessee stating, amongst other things, that Lessee has caused the Unit to be inspected by Lessee's inspector and that such Unit is acceptable to Lessee and has been marked in accordance with Section 4 hereof.

"Closing Date" shall have the meaning as set forth in Article 3 of the Security Documents.

"Event of Default" shall mean any of the events referred to in Section 13 hereof.

"Fair Market Value" shall have the meaning and shall be determined in accordance with the provisions of Section 21 hereof.

"Finance Agreement" shall mean the Finance Agreement dated as of the date hereof among the Vendor, the Railroad and the Investors, as said Finance Agreement may from time to time be amended or supplemented.

"Interim Rent" shall mean for each Unit the aggregate amount payable pursuant to Section 3(a) hereof for the period from (and including) the Acceptance Date for such Unit to (but not including) November 1, 1972.

"Investors" shall mean the parties named in Schedule A to the Finance Agreement.

"Lease Term" for any Unit shall mean the full term for which such Unit is leased hereunder pursuant to Section 2 hereof.

"Liens" shall mean liens, mortgages, encumbrances, pledges, charges and security interests of any kind.

“Reconstruction Cost” for any Unit shall have the meaning as set forth in Article 3 of the Security Documents.

“Rent” shall mean all Interim Rent, Basic Rent and Supplemental Rent.

“Security Documents” shall mean the Reconstruction and Conditional Sale Agreement dated as of February 1, 1972 among The First Pennsylvania Banking and Trust Company, as Agent under the Finance Agreement, Bankers Trust Company, as Trustee under the Trust Agreement, and Chicago and North Western Railway Company, as said Reconstruction and Conditional Sale Agreement may from time to time be supplemented or amended, or the terms thereof waived or modified.

“Semiannual Payment Dates” shall mean May 1, 1973 and the first day of November and May thereafter to and including November 1, 1984.

“Supplemental Rent” shall mean all amounts, liabilities and obligations which Lessee assumes or agrees to pay hereunder to Lessor or others, including Casualty Value payments, but excluding Interim Rent and Basic Rent.

“Trust Agreement” shall mean the Trust Agreement dated as of January 12, 1972 between Lessor and Continental Illinois National Bank and Trust Company of Chicago, as Beneficiary as said Trust Agreement may from time to time be supplemented or amended, or the terms thereof waived or modified, to the extent permitted by, and in accordance with, the terms of the Trust Agreement.

“Unit” shall mean any of the forty-five locomotives which are to be rehabilitated by the Railroad and which are to be leased hereunder by Lessee pursuant to the terms hereof and, subject to Section 11 hereof, any and all appliances, parts, instruments, appurtenances, accessories and

other equipment of whatever nature from time to time incorporated or installed in or on such Unit; "the Units" shall mean collectively all Units described in all Certificates of Acceptance.

SECTION 2. LEASE OF UNITS; TERM. (a) "Lease of Units and Certificate of Acceptance". Lessor hereby agrees on any Closing Date to make payment in accordance with the terms of Article 3 of the Security Documents for each Unit with respect to which the conditions precedent specified in Section 26 of this Lease shall be fulfilled as of such Closing Date, and subject to the Security Documents, Lessor agrees to deliver and lease to Lessee hereunder, the Units to be delivered by the Railroad and accepted and settled for under the Security Documents; provided, however, that no Unit may be delivered and leased hereunder later than December 31, 1972. The delivery, acceptance and leasing of each Unit shall be evidenced by the delivery of a Certificate of Acceptance dated as of the Acceptance Date for such Unit. The Lessor will cause each Unit to be delivered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Security Documents. Upon such delivery, the Lessee will cause one or more employees of Lessee, as the authorized representative or representatives of Lessee and Lessor, to inspect and accept delivery of each Unit pursuant to this Lease and the Security Documents, respectively, and the Lessee will deliver to the Lessor a Certificate of Acceptance in the form of Exhibit A to this Lease Agreement, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and Lessor and will be subject thereafter to all the terms and conditions of this Lease and the Security Documents. Lessee hereby agrees that the execution of the Certificate of Acceptance for any Unit by such employee or employees on behalf of the Lessee shall,

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

(b) "Lease Term". The Lease Term for any Unit shall commence on the Acceptance Date for such Unit and shall terminate on November 1, 1984, both dates inclusive, unless this Lease is earlier terminated as provided herein.

SECTION 3. (a) "Interim Rent". On November 1, 1972 Lessee shall pay Lessor as Interim Rent for the period from (and including) the first Acceptance Date to (but not including) November 1, 1972 an amount equal to the sum of (A) 8.75% per annum on all funds paid to the Railroad and the Seller by the Vendor (and not supplied by the Trustee) pursuant to Article 3 of the Security Documents computed from the respective date of such payment to (but not including) November 1, 1972 and (B) 9% per annum on all funds paid to the Vendor by the Lessor, as Trustee, pursuant to Article 3 of the Security Documents, computed from (and including) the respective date of such payment to (but not including) November 1, 1972. The foregoing computation shall be on the basis of a 360-day year of twelve 30-day months.

(b) "Basic Rent". Lessee further agrees to pay Lessor as Basic Rent for each Unit subject to this Lease 24 successive semiannual instalments each in the amount of 6.211% of the Acquisition Price of such Unit, such instalment to be payable on the first day of each May and November, commencing May 1, 1973, to and including November 1, 1984; provided, however, that the Basic Rent instalment due May 1, 1973, shall be reduced by the sum of (A) an amount equal to 6% per annum of 20% of the Acquisition Price of each Unit settled for after November 1, 1972, for the period including November 1, 1972, to and including the date of such settlement and (B) an amount

Bank for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall have reasonably requested the Bank to contest such claim as above provided and shall have duly complied with all of the terms of this Section 5(c), the Lessee's liability with respect to the investment credit or depreciation deduction or interest deduction lost as a consequence of such claim shall become fixed upon final determination of the Bank's liability for the tax claimed and after giving effect to any refund obtained, together with interest thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Bank makes payment of the tax attributable to the portion of the investment credit or depreciation deduction or interest deduction lost. In the case of any such claim by the Internal Revenue Service referred to above, the Bank agrees to promptly notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least thirty days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Bank and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim.

(d) "Continuing Indemnity." The Lessee hereby confirms, for the benefit of the parties indemnified hereunder, the indemnities and undertakings of the Lessee contained in this Section 5 of the Lease. All the indemnities contained in this Section 5 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the separate benefit of, and shall be separately enforceable by, the Lessor, the Bank and the Vendor.

SECTION 6. LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE. (a) "Payment of Casualty Value Upon a Casu-

alty Occurrence". If a Casualty Occurrence occurs with respect to a Unit, Lessee shall give Lessor written notice thereof as soon as practicable after such occurrence and shall pay the Casualty Value for such Unit (computed as of the date such payment is made) to Lessor on the Semi-annual Payment Date next following the date on which written notice is given of the occurrence of such Casualty Occurrence; provided that, if such Casualty Occurrence occurs before November 1, 1972, such payment shall be made on November 1, 1972 in an amount equal to that percentage of the Acquisition Price as is set forth opposite Payment No. 1 in Section 6(c) hereof. Upon payment in full of such Casualty Value, (A) the obligation of Lessee to pay Basic Rent hereunder with respect to such Unit shall terminate with the Basic Rent payable on the Semiannual Payment Date which immediately precedes the Semiannual Payment Date on which the Casualty Value is paid (but the Lessee's obligations as to payments of Supplemental Rent shall continue), and (B) Lessor will transfer to Lessee, without recourse or warranty (except with respect to its own acts), all Lessor's right, title and interest, if any, in and to such Unit.

(b) "Application of Other Payments Upon a Casualty Occurrence or Other Loss or Damage to a Unit." Any payment received at any time by Lessor or by Lessee from any party (except Lessee) as the result of the occurrence of a Casualty Occurrence or other loss or damage to any Unit shall be paid to Lessor and applied to the satisfaction of Lessee's obligations hereunder, including Lessee's obligations to pay the Casualty Value for such Unit or to repair such Unit.

(c) "Casualty Value". The Casualty Value of each Unit as of any Semiannual Payment Date shall be that percent-

age of the Acquisition Price of such Unit as is set forth in the following schedule opposite the number of such Semi-annual Payment Date (such numbers commencing with the payment due on May 1, 1973) :

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	109.98633%	13	74.97530%
2	104.29911	14	71.04597
3	98.75290	15	66.87456
4	97.82743	16	62.49429
5	96.53802	17	57.90486
6	94.91959	18	53.14267
7	92.95971	19	48.20614
8	90.69360	20	43.08889
9	88.11102	21	37.80677
10	85.24484	22	32.35607
11	82.08706	23	26.75401
12	78.66582	24	20.99831

Except as hereinabove on this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder. It is understood that the Casualty Value determined as above provided includes recovery by Lessor of all lost tax benefits as a result of a Casualty Occurrence to such Unit and for which indemnification is provided for in Section 5(b) hereof, but not including the investment tax credit. The payment of the Casualty Value of any Unit shall not release Lessee from its indemnity obligations with respect to such Unit.

Notwithstanding anything to the contrary contained herein, in the event of a Casualty Occurrence to any Unit after delivery and acceptance but prior to settlement for such Unit under the Security Documents, then in such event

Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee may, by written notice delivered to Lessor not less than nine months prior to the expiration of the Lease Term, advise the Lessor that it may elect, but shall have no obligation to elect, to purchase all, but not less than all, the Units subject to this Lease at the end of the Lease Term at a price equal to the Fair Market Value of such Units at the end of such Term, and request a determination of such value. On the date of such purchase Lessor shall transfer title to such Units to Lessee without any representation or warranty except that such Units are free of Liens (other than liens which Lessee is required to discharge hereunder) resulting from acts of or claims against Lessor, together with such documents evidencing transfer of title as Lessee shall reasonably request.

(b) "Determination of Fair Market Value". Upon Lessee giving notice as provided in Subsection (a) and thereafter, Lessor and Lessee shall consult for the purpose of determining the Fair Market Value of the Units as of the end of such Term, and any value agreed upon in writing shall constitute such Fair Market Value for the purposes of this Section. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessor and Lessee fail to agree upon such value prior to six months before the expiration of such Term, Lessee may request that such value shall be determined by a qualified Appraiser. The term Appraiser shall mean a qualified independent equip-

ment appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement within 20 business days after Lessee's request, a panel of three qualified independent equipment appraisers, one selected by the Lessor, the second by the Lessee and the third to be designated by the first two selected. The Appraiser shall be instructed to determine the Fair Market Value within 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and Lessee. The determination so made shall be final, conclusive and binding upon the Lessor and Lessee. Provided that the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not more than ten business days following communication to the Lessee of such determination by the Appraiser, elect to purchase all, but not fewer than all the Units for a price equal to the Fair Market Value thereof as so determined. The Lessee agrees to pay, and hold Lessor harmless from, the expenses, fees and costs of the Appraiser whether or not it elects to purchase such Units.

SECTION 22. RECORDING. The Lessee will cause this Lease, any assignment hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record (and will refile, reregister and redeposit or re-record whenever required) all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out

validating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Unit except as a Lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease 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. Although this Lease is dated as of February 1, 1972 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY, as Trustee

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*



Bank for the payment of such tax in accordance with the terms hereof. If any such claim referred to above shall be made by the Internal Revenue Service and the Lessee shall have reasonably requested the Bank to contest such claim as above provided and shall have duly complied with all of the terms of this Section 5(c), the Lessee's liability with respect to the investment credit or depreciation deduction or interest deduction lost as a consequence of such claim shall become fixed upon final determination of the Bank's liability for the tax claimed and after giving effect to any refund obtained, together with interest thereon; but in all other cases the liability of the Lessee shall become fixed at the time the Bank makes payment of the tax attributable to the portion of the investment credit or depreciation deduction or interest deduction lost. In the case of any such claim by the Internal Revenue Service referred to above, the Bank agrees to promptly notify the Lessee in writing of such claim and agrees not to make payment of the tax claimed for at least thirty days after the giving of such notice and agrees to give to the Lessee any relevant information relating to such claim which may be particularly within the knowledge of the Bank and shall otherwise cooperate with the Lessee in good faith in order to effectively contest any such claim.

(d) "Continuing Indemnity." The Lessee hereby confirms, for the benefit of the parties indemnified hereunder, the indemnities and undertakings of the Lessee contained in this Section 5 of the Lease. All the indemnities contained in this Section 5 shall continue in full force and effect notwithstanding the expiration or other termination of this Lease and are expressly made for the separate benefit of, and shall be separately enforceable by, the Lessor, the Bank and the Vendor.

SECTION 6. LOSS, DESTRUCTION, CONDEMNATION OR DAMAGE. (a) "Payment of Casualty Value Upon a Casu-

alty Occurrence". If a Casualty Occurrence occurs with respect to a Unit, Lessee shall give Lessor written notice thereof as soon as practicable after such occurrence and shall pay the Casualty Value for such Unit (computed as of the date such payment is made) to Lessor on the Semi-annual Payment Date next following the date on which written notice is given of the occurrence of such Casualty Occurrence; provided that, if such Casualty Occurrence occurs before November 1, 1972, such payment shall be made on November 1, 1972 in an amount equal to that percentage of the Acquisition Price as is set forth opposite Payment No. 1 in Section 6(c) hereof. Upon payment in full of such Casualty Value, (A) the obligation of Lessee to pay Basic Rent hereunder with respect to such Unit shall terminate with the Basic Rent payable on the Semiannual Payment Date which immediately precedes the Semiannual Payment Date on which the Casualty Value is paid (but the Lessee's obligations as to payments of Supplemental Rent shall continue), and (B) Lessor will transfer to Lessee, without recourse or warranty (except with respect to its own acts), all Lessor's right, title and interest, if any, in and to such Unit.

(b) "Application of Other Payments Upon a Casualty Occurrence or Other Loss or Damage to a Unit." Any payment received at any time by Lessor or by Lessee from any party (except Lessee) as the result of the occurrence of a Casualty Occurrence or other loss or damage to any Unit shall be paid to Lessor and applied to the satisfaction of Lessee's obligations hereunder, including Lessee's obligations to pay the Casualty Value for such Unit or to repair such Unit.

(c) "Casualty Value". The Casualty Value of each Unit as of any Semiannual Payment Date shall be that percent-

age of the Acquisition Price of such Unit as is set forth in the following schedule opposite the number of such Semi-annual Payment Date (such numbers commencing with the payment due on May 1, 1973) :

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
1	109.98633%	13	74.97530%
2	104.29911	14	71.04597
3	98.75290	15	66.87456
4	97.82743	16	62.49429
5	96.53802	17	57.90486
6	94.91959	18	53.14267
7	92.95971	19	48.20614
8	90.69360	20	43.08889
9	88.11102	21	37.80677
10	85.24484	22	32.35607
11	82.08706	23	26.75401
12	78.66582	24	20.99831

Except as hereinabove on this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder. It is understood that the Casualty Value determined as above provided includes recovery by Lessor of all lost tax benefits as a result of a Casualty Occurrence to such Unit and for which indemnification is provided for in Section 5(b) hereof, but not including the investment tax credit. The payment of the Casualty Value of any Unit shall not release Lessee from its indemnity obligations with respect to such Unit.

Notwithstanding anything to the contrary contained herein, in the event of a Casualty Occurrence to any Unit after delivery and acceptance but prior to settlement for such Unit under the Security Documents, then in such event

Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee may, by written notice delivered to Lessor not less than nine months prior to the expiration of the Lease Term, advise the Lessor that it may elect, but shall have no obligation to elect, to purchase all, but not less than all, the Units subject to this Lease at the end of the Lease Term at a price equal to the Fair Market Value of such Units at the end of such Term, and request a determination of such value. On the date of such purchase Lessor shall transfer title to such Units to Lessee without any representation or warranty except that such Units are free of Liens (other than liens which Lessee is required to discharge hereunder) resulting from acts of or claims against Lessor, together with such documents evidencing transfer of title as Lessee shall reasonably request.

(b) "Determination of Fair Market Value". Upon Lessee giving notice as provided in Subsection (a) and thereafter, Lessor and Lessee shall consult for the purpose of determining the Fair Market Value of the Units as of the end of such Term, and any value agreed upon in writing shall constitute such Fair Market Value for the purposes of this Section. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessor and Lessee fail to agree upon such value prior to six months before the expiration of such Term, Lessee may request that such value shall be determined by a qualified Appraiser. The term Appraiser shall mean a qualified independent equip-

ment appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement within 20 business days after Lessee's request, a panel of three qualified independent equipment appraisers, one selected by the Lessor, the second by the Lessee and the third to be designated by the first two selected. The Appraiser shall be instructed to determine the Fair Market Value within 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and Lessee. The determination so made shall be final, conclusive and binding upon the Lessor and Lessee. Provided that the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not more than ten business days following communication to the Lessee of such determination by the Appraiser, elect to purchase all, but not fewer than all the Units for a price equal to the Fair Market Value thereof as so determined. The Lessee agrees to pay, and hold Lessor harmless from, the expenses, fees and costs of the Appraiser whether or not it elects to purchase such Units.

SECTION 22. RECORDING. The Lessee will cause this Lease, any assignment hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record (and will refile, reregister and redeposit or re-record whenever required) all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out

validating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Unit except as a Lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease 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. Although this Lease is dated as of February 1, 1972 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY, as Trustee

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*



**SCHEDULE A TO LEASE AGREEMENT**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$ 220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309 ✓	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

Closing Date as though made on and as of such date, (B) there exists no Event of Default or event which, with notice or lapse of time or both would become an Event of Default, (C) all taxes and transportation charges with respect to the purchase and leasing of the Units have been paid, and (D) that the insurance maintained by the Lessee complies with the terms of Section 7 of this Lease.

(f) The Lessor and the Bank shall have received a favorable opinion of the Vice President—Law of Chicago and North Western Railway Company, dated such Closing Date, addressed to and in form and substance satisfactory to the Lessor and the Bank, to the effect that: (i) the Lessee is a corporation duly organized and existing in good standing under the laws of the State of Wisconsin, and is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) the Lessee has full power, authority and legal right to enter into and perform the Lease, the Finance Agreement and the Security Documents, and the execution, delivery and performance of such agreements have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval, do not violate any judgment, order, law or regulation applicable to Lessee, and do not violate any provisions of Lessee's Certificate of Incorporation or By-Laws and, to the best knowledge and belief of such counsel after due inquiry, do not result in the breach of, or constitute a default under, or contravene any provisions of, or result in the creation of any lien, charge, encumbrance or security interest upon any assets (other than the Lessee's leasehold interest in the Units) of the Lessee under any indenture, agreement or

instrument to which the Lessee is a party or by which it or its assets may be bound or affected; (iii) the Lease, the Finance Agreement and the Security Documents constitute legal, valid and binding obligations of the Lessee enforceable in accordance with their respective terms subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) to the best knowledge and belief of such counsel after due inquiry, except as set forth in a schedule furnished to Lessor, there are no suits or proceedings pending or threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Lessee which, in the opinion of such counsel, will have a material adverse effect on the financial condition or business of Lessee; (v) neither the execution and delivery by the Lessee of the Lease, the Finance Agreement or the Security Documents, nor any of the transactions contemplated thereby require the consent, approval, or authorization, or the giving of notice to the Interstate Commerce Commission or any other governmental authority; (vi) except for the filing and recording with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of the Lease, no recording or filing of the Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any state thereof in order to protect the Lessor's title to, and interest in, any of the Units as against the Lessee and any third parties in any applicable jurisdictions within the United States; (vii) the Reconstruction Cost of the Units pursuant to the Security Documents constitutes "new section 38 property" as defined in the Internal Revenue Code of 1954, as amended; and (viii) registration of the Security Docu-

ments or any interest therein held by the Investors or of the interest of the Bank in the Trust are exempted transactions under the Securities Act of 1933 as amended and it is not necessary to qualify the Security Documents or the Trust Agreement under the Trust Indenture Act of 1939 as amended. In giving his opinion specified in (vii) above, such counsel may rely on the opinion of Messrs. White & Case given pursuant to Subsection (h) of this Section 26, and in giving his opinion specified in (viii) above, such counsel may rely on the opinion of Messrs. Cravath, Swaine & Moore given pursuant to Subsection (j) of this Section 26.

(g) The Bank shall have received a favorable opinion from Messrs. White & Case, as counsel for the Lessor, dated such Closing Date, addressed to and in form and substance satisfactory to the Bank, to the effect that: (i) Lessor has full power, authority and legal right to execute, deliver and perform the Trust Agreement, the Lease, the Certificate of Acceptance covering such Units and the Security Documents; (ii) the documents referred to in (i) above have been duly authorized, executed and delivered by the Lessor; (iii) the execution and delivery of the documents referred to in (i) above by the Lessor does not violate the charter or by-laws of the Lessor or any Federal or New York State laws or regulations governing the banking or trust powers of the Lessor or, to the best knowledge and belief of such counsel after due inquiry, of any indenture, agreement, or other instrument, license, judgment or order applicable to the Lessor; (iv) no approval, consent, order, authorization, registration or notice is required (except as shall have been duly obtained or given, specifying the same) for the carrying out by the Lessor of any of the transactions con-

templated by the agreements referred to in (i) above or by any (X) Federal governmental authority or agency pursuant to any Federal law governing the banking or trust powers of the Lessor or (Y) New York State governmental authority or agency pursuant to New York State banking law; and (v) such other matters incident to the foregoing as the Bank may reasonably request.

(h) The Bank shall have received a favorable opinion of Messrs. White & Case, as special tax counsel to the Bank, dated such Closing Date, addressed to and in form and substance satisfactory to the Bank, to the effect that for federal income tax purposes: (i) the Lease will be treated as a lease under which Chicago and North Western Railway Company will be the lessee and the Bank will be the owner and the lessor of the Units; (ii) the Bank will be treated as the original user of the Units to the extent of that portion of the Acquisition Price of such Units which is properly attributable to the Reconstruction Cost incurred after the Bank acquired the Units; (iii) the Reconstruction Cost will qualify as "new section 38 property" for purposes of investment credit and the Bank is entitled to claim the investment credit under Section 38 of the Internal Revenue Code of 1954, as amended (the "Code") and the regulations thereunder, subject to the limitations of Section 46(a)(2) of the Code; (iv) the Bank will be entitled to elect to use any of the methods of accelerated depreciation described in Section 167(b)(2) or (3) of the Code with respect to that portion of the Acquisition Price of any Unit which constitutes the Reconstruction Cost and the original use of which is considered to commence with the Bank as described above in clause (ii); (v) the Bank will be entitled to depreciation deductions under any allowable method other than accelerated methods

for that portion of the Acquisition Price of any Unit for which the original use is not deemed to have commenced with the Bank and which does not qualify for the investment credit and (vii) the Bank will be entitled to deductions for interest payable by it pursuant to the Security Documents.

(i) The Lessor and the Bank shall have received a favorable opinion of the Vice President—Law of the Seller, dated such Closing Date, addressed to and in form and substance satisfactory to the Lessor and the Bank to the effect that: (i) Seller has the full power, authority and legal right to enter into and perform the the Hulk Purchase Agreement and it constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with the terms thereof subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally, (ii) the Seller's Bills of Sale for each Unit constitute effective instruments for the conveyance of title for such Unit to the Lessor, (iii) good and marketable title to the hulks has been duly conveyed by Seller to Lessor under the Hulk Purchase Agreement prior to the commencement of reconstruction of the hulks, and (iv) good and marketable title to such Units has been duly conveyed by Seller to the Lessor free and clear of all charges, encumbrances, claims and security interests of any kind.

(j) The Bank shall have received a copy of the opinion of Messrs. Cravath, Swaine & Moore, as special counsel for the Vendor and the Investors, in form and substance as required by Article 3 of the Security Documents.

(k) All proceedings and documents in connection with the transactions contemplated by this Lease shall

be satisfactory in form and substance to the Bank and its counsel and the Bank and its counsel shall have received counterparts or copies of all such documents together with such other evidence as the Bank or such counsel may reasonably request in order to establish the consummation of the transactions contemplated by this Lease and compliance with the conditions set forth in this Section.

In the event of any assignment by Lessee pursuant to Section 19, the conditions to be met and the opinions prescribed in this Section 26 may be accomplished by the assignee and its appropriate officers, and such conditions and opinions may reflect such changes as may be appropriate due to such assignment.

SECTION 27. NOTICES. All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when delivered or deposited in the United States mail, with proper postage for certified mail prepaid, addressed, if to Lessee, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Vice President—Finance, and if to Lessor addressed to it at its office at 16 Wall Street, New York, New York 10015. Attention: Corporate Trust Division, or, as to either party, at such other address as such party shall from time to time designate in writing to the other party. Copies of all such notices shall be mailed to the Bank at 231 South LaSalle Street, Chicago, Illinois 60093, Attention: Terrence J. Bruggeman.

SECTION 28. MISCELLANEOUS. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without in-

same shall be continuing, Lessor may, at its option, declare this Lease to be in default 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 with respect to all or any of the Units 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) demand that Lessee, and Lessee shall upon the written demand of Lessor, return any Unit promptly to Lessor in the manner and condition required by, and otherwise in accordance with all of the provisions of, Section 15 hereof as if such Unit were being returned at the end of the Lease Term for such Unit, except that, at the option of the Lessor, the Lessor may keep any Unit on any of the lines or premises of the Lessee until the Lessor shall have leased, sold or otherwise disposed of the same, and for such purpose the Lessee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee; or Lessor, at its option, may enter upon the premises where all or any Units are located and take immediate possession of and remove the same by summary proceedings or otherwise, all without liability to Lessor for or by reason of such entry or taking of possession, whether for the restoration of damage to property caused by such taking or otherwise;

(b) sell any Unit at one or more public or private sales, 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 below), and Lessor may hold Lessee liable (as liquidated damages for loss

of a bargain and not as a penalty and in lieu of any further Interim Rent and Basic Rent) for all unpaid Interim Rent and Basic Rent for such Unit due for periods up to and including the Semiannual Payment Date next following the date on which such sale occurs plus the amount of any deficiency between the net proceeds of such sale and the Casualty Value of such Unit, computed as of the Semiannual Payment Date for such Unit next following the date of such sale, together with interest at the rate of 10% per annum on the amount of such deficiency from the Semiannual Payment Date as of which such Casualty Value is computed until the date of actual payment;

(c) Unless Lessor shall have exercised its remedy pursuant to Subsection (b) above with respect to any Unit, Lessor, by written notice to Lessee specifying a payment date which shall be a Semiannual Payment Date not earlier than 10 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 and in lieu of Interim Rent or Basic Rent for such Unit due after the payment date specified in such notice), any unpaid Interim Rent and Basic Rent for such Unit due for periods prior to the payment date specified in such notice plus whichever of the following amounts Lessor, in its sole discretion, shall specify in such notice (together with interest on such amount at the rate of 10% per annum from the payment date specified in such notice to the date of actual payment): (i) an amount equal to the excess, if any, of the Casualty Value for such Unit, computed as of the payment date specified in such notice, over the fair market rental value (computed as hereinafter in

this Section provided) of such Unit for the remainder of the Lease Term after discounting such fair market rental value semi-annually (effective on the Semiannual Payment Dates) to present worth as of the payment date specified in such notice at the rate of 10% per annum; or (ii) an amount equal to the excess, if any, of the Casualty Value for such Unit as of the payment date specified in such notice over the fair market sales value of such Unit (computed as hereafter in this Section provided) as of the payment date specified in such notice;

(d) use, operate 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;

(e) Lessor may exercise any other right or remedy which may be available to it under applicable law or proceed by appropriate court action to enforce the terms hereof or to recover damages for the breach hereof or to rescind this Lease as to any or all of the Units.

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 forgoing remedies and for all 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 all costs and expenses incurred in connection with the return of any Unit in accordance with Section 15 hereof or in placing such Unit in the condition required by said Section. For the purpose of Subsection (c) above,

the "fair market rental value" or the "fair market sales value" of any Unit shall mean such value as determined by mutual written agreement of Lessor and Lessee or, upon request by Lessor at any time prior to such mutual agreement, by a recognized independent appraiser selected by Lessor. At any sale of a Unit pursuant to this Section, Lessor or any Investor may bid for and purchase such Unit. Except as otherwise expressly provided above, no remedy referred to in this Section is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law or in equity; and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all of such other remedies. No express or implied waiver by Lessor of any Event of Default shall in any way be, or be construed to be, a waiver of any future or subsequent Event of Default. To the extent permitted by applicable law, Lessee hereby waives any rights now or hereafter conferred by statute or otherwise which may require Lessor to sell, lease or otherwise use any Unit in mitigation of Lessor's damages as set forth in this Section or which may otherwise limit or modify any of Lessor's rights and remedies in this Section.

SECTION 15. RETURN OF UNITS. (a) "Condition Upon Return." Except in the case of Units with respect to which a Casualty Occurrence has occurred, Lessee will deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessor may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or

to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. At the time of such return the Unit shall be free and clear of all Liens and rights of others (except the rights of Lessor and the Vendor, if any) and shall be in the condition and repair required to be maintained during the Lease Term for such Unit under the express provisions hereof.

(b) "Lessor's Right to Abandon." Lessor may, in its sole discretion, elect to abandon any Unit returned pursuant to this Section by delivering written notice to such effect to Lessee. Title to such Unit shall pass to Lessee upon Lessee's receipt of such notice and thereafter Lessee shall hold Lessor harmless from any and all liability arising from the ownership thereof; *provided, however*, that Lessor may not exercise such election with respect to any Unit more than three months after the end of the Lease Term for such Unit.

(c) "Inspection; Repossession." During any storage period provided in this Section, Lessee will permit Lessor or any person designated by it, including authorized representatives of any prospective purchaser or lessee of any Unit, to inspect the same; *provided, however*, that Lessee shall not be liable, except in the case of its negligence or that of its employees or agents, for any injury or death to any person exercising, either on behalf of Lessor or any prospective purchaser or lessee, the rights of inspection granted hereunder. Lessee irrevocably authorizes Lessor, at and after any time Lessee is obligated to return possession of any Unit to Lessor, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall at the time be in possession of such Unit, and in connection therewith Lessee will supply Lessor with such documents as Lessor may reasonably request. The

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

CHICAGO AND NORTH WESTERN RAILWAY COMPANY,

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY, as Trustee

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*



**SCHEDULE A TO LEASE AGREEMENT**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
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3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
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<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

Closing Date as though made on and as of such date, (B) there exists no Event of Default or event which, with notice or lapse of time or both would become an Event of Default, (C) all taxes and transportation charges with respect to the purchase and leasing of the Units have been paid, and (D) that the insurance maintained by the Lessee complies with the terms of Section 7 of this Lease.

(f) The Lessor and the Bank shall have received a favorable opinion of the Vice President—Law of Chicago and North Western Railway Company, dated such Closing Date, addressed to and in form and substance satisfactory to the Lessor and the Bank, to the effect that: (i) the Lessee is a corporation duly organized and existing in good standing under the laws of the State of Wisconsin, and is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) the Lessee has full power, authority and legal right to enter into and perform the Lease, the Finance Agreement and the Security Documents, and the execution, delivery and performance of such agreements have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval, do not violate any judgment, order, law or regulation applicable to Lessee, and do not violate any provisions of Lessee's Certificate of Incorporation or By-Laws and, to the best knowledge and belief of such counsel after due inquiry, do not result in the breach of, or constitute a default under, or contravene any provisions of, or result in the creation of any lien, charge, encumbrance or security interest upon any assets (other than the Lessee's leasehold interest in the Units) of the Lessee under any indenture, agreement or

instrument to which the Lessee is a party or by which it or its assets may be bound or affected; (iii) the Lease, the Finance Agreement and the Security Documents constitute legal, valid and binding obligations of the Lessee enforceable in accordance with their respective terms subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) to the best knowledge and belief of such counsel after due inquiry, except as set forth in a schedule furnished to Lessor, there are no suits or proceedings pending or threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Lessee which, in the opinion of such counsel, will have a material adverse effect on the financial condition or business of Lessee; (v) neither the execution and delivery by the Lessee of the Lease, the Finance Agreement or the Security Documents, nor any of the transactions contemplated thereby require the consent, approval, or authorization, or the giving of notice to the Interstate Commerce Commission or any other governmental authority; (vi) except for the filing and recording with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of the Lease, no recording or filing of the Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any state thereof in order to protect the Lessor's title to, and interest in, any of the Units as against the Lessee and any third parties in any applicable jurisdictions within the United States; (vii) the Reconstruction Cost of the Units pursuant to the Security Documents constitutes "new section 38 property" as defined in the Internal Revenue Code of 1954, as amended; and (viii) registration of the Security Docu-

ments or any interest therein held by the Investors or of the interest of the Bank in the Trust are exempted transactions under the Securities Act of 1933 as amended and it is not necessary to qualify the Security Documents or the Trust Agreement under the Trust Indenture Act of 1939 as amended. In giving his opinion specified in (vii) above, such counsel may rely on the opinion of Messrs. White & Case given pursuant to Subsection (h) of this Section 26, and in giving his opinion specified in (viii) above, such counsel may rely on the opinion of Messrs. Cravath, Swaine & Moore given pursuant to Subsection (j) of this Section 26.

(g) The Bank shall have received a favorable opinion from Messrs. White & Case, as counsel for the Lessor, dated such Closing Date, addressed to and in form and substance satisfactory to the Bank, to the effect that: (i) Lessor has full power, authority and legal right to execute, deliver and perform the Trust Agreement, the Lease, the Certificate of Acceptance covering such Units and the Security Documents; (ii) the documents referred to in (i) above have been duly authorized, executed and delivered by the Lessor; (iii) the execution and delivery of the documents referred to in (i) above by the Lessor does not violate the charter or by-laws of the Lessor or any Federal or New York State laws or regulations governing the banking or trust powers of the Lessor or, to the best knowledge and belief of such counsel after due inquiry, of any indenture, agreement, or other instrument, license, judgment or order applicable to the Lessor; (iv) no approval, consent, order, authorization, registration or notice is required (except as shall have been duly obtained or given, specifying the same) for the carrying out by the Lessor of any of the transactions con-

Default) shall have occurred and be continuing and this Lease shall not have been earlier terminated, Lessee may, by written notice delivered to Lessor not less than nine months prior to the expiration of the Lease Term, advise the Lessor that it may elect, but shall have no obligation to elect, to purchase all, but not less than all, the Units subject to this Lease at the end of the Lease Term at a price equal to the Fair Market Value of such Units at the end of such Term, and request a determination of such value. On the date of such purchase Lessor shall transfer title to such Units to Lessee without any representation or warranty except that such Units are free of Liens (other than liens which Lessee is required to discharge hereunder) resulting from acts of or claims against Lessor, together with such documents evidencing transfer of title as Lessee shall reasonably request.

(b) "Determination of Fair Market Value". Upon Lessee giving notice as provided in Subsection (a) and thereafter, Lessor and Lessee shall consult for the purpose of determining the Fair Market Value of the Units as of the end of such Term, and any value agreed upon in writing shall constitute such Fair Market Value for the purposes of this Section. Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If Lessor and Lessee fail to agree upon such value prior to six months before the expiration of such Term, Lessee may request that such value shall be determined by a qualified Appraiser. The term Appraiser shall mean a qualified independent equip-

ment appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement within 20 business days after Lessee's request, a panel of three qualified independent equipment appraisers, one selected by the Lessor, the second by the Lessee and the third to be designated by the first two selected. The Appraiser shall be instructed to determine the Fair Market Value within 30 days following appointment and shall promptly communicate such determination in writing to the Lessor and Lessee. The determination so made shall be final, conclusive and binding upon the Lessor and Lessee. Provided that the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not more than ten business days following communication to the Lessee of such determination by the Appraiser, elect to purchase all, but not fewer than all the Units for a price equal to the Fair Market Value thereof as so determined. The Lessee agrees to pay, and hold Lessor harmless from, the expenses, fees and costs of the Appraiser whether or not it elects to purchase such Units.

SECTION 22. RECORDING. The Lessee will cause this Lease, any assignment hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, deposit, and recording required of the Lessor under the Security Documents and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, record (and will refile, reregister and redeposit or re-record whenever required) all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out

validating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Unit except as a Lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease 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. Although this Lease is dated as of February 1, 1972 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

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

CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY,

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY, as Trustee

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*



**SCHEDULE A TO LEASE AGREEMENT**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$ 220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309 ✓	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

Closing Date as though made on and as of such date, (B) there exists no Event of Default or event which, with notice or lapse of time or both would become an Event of Default, (C) all taxes and transportation charges with respect to the purchase and leasing of the Units have been paid, and (D) that the insurance maintained by the Lessee complies with the terms of Section 7 of this Lease.

(f) The Lessor and the Bank shall have received a favorable opinion of the Vice President—Law of Chicago and North Western Railway Company, dated such Closing Date, addressed to and in form and substance satisfactory to the Lessor and the Bank, to the effect that: (i) the Lessee is a corporation duly organized and existing in good standing under the laws of the State of Wisconsin, and is duly qualified to do business wherever necessary to carry on its present business and operations; (ii) the Lessee has full power, authority and legal right to enter into and perform the Lease, the Finance Agreement and the Security Documents, and the execution, delivery and performance of such agreements have been duly authorized by all necessary corporate action on the part of the Lessee, do not require any stockholder approval, do not violate any judgment, order, law or regulation applicable to Lessee, and do not violate any provisions of Lessee's Certificate of Incorporation or By-Laws and, to the best knowledge and belief of such counsel after due inquiry, do not result in the breach of, or constitute a default under, or contravene any provisions of, or result in the creation of any lien, charge, encumbrance or security interest upon any assets (other than the Lessee's leasehold interest in the Units) of the Lessee under any indenture, agreement or

instrument to which the Lessee is a party or by which it or its assets may be bound or affected; (iii) the Lease, the Finance Agreement and the Security Documents constitute legal, valid and binding obligations of the Lessee enforceable in accordance with their respective terms subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally; (iv) to the best knowledge and belief of such counsel after due inquiry, except as set forth in a schedule furnished to Lessor, there are no suits or proceedings pending or threatened in any court or before any regulatory commission, board or other administrative governmental agency against or affecting the Lessee which, in the opinion of such counsel, will have a material adverse effect on the financial condition or business of Lessee; (v) neither the execution and delivery by the Lessee of the Lease, the Finance Agreement or the Security Documents, nor any of the transactions contemplated thereby require the consent, approval, or authorization, or the giving of notice to the Interstate Commerce Commission or any other governmental authority; (vi) except for the filing and recording with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of the Lease, no recording or filing of the Lease, or of any financing statement with respect thereto, is necessary under the laws of the United States of America or any state thereof in order to protect the Lessor's title to, and interest in, any of the Units as against the Lessee and any third parties in any applicable jurisdictions within the United States; (vii) the Reconstruction Cost of the Units pursuant to the Security Documents constitutes "new section 38 property" as defined in the Internal Revenue Code of 1954, as amended; and (viii) registration of the Security Docu-

ments or any interest therein held by the Investors or of the interest of the Bank in the Trust are exempted transactions under the Securities Act of 1933 as amended and it is not necessary to qualify the Security Documents or the Trust Agreement under the Trust Indenture Act of 1939 as amended. In giving his opinion specified in (vii) above, such counsel may rely on the opinion of Messrs. White & Case given pursuant to Subsection (h) of this Section 26, and in giving his opinion specified in (viii) above, such counsel may rely on the opinion of Messrs. Cravath, Swaine & Moore given pursuant to Subsection (j) of this Section 26.

(g) The Bank shall have received a favorable opinion from Messrs. White & Case, as counsel for the Lessor, dated such Closing Date, addressed to and in form and substance satisfactory to the Bank, to the effect that: (i) Lessor has full power, authority and legal right to execute, deliver and perform the Trust Agreement, the Lease, the Certificate of Acceptance covering such Units and the Security Documents; (ii) the documents referred to in (i) above have been duly authorized, executed and delivered by the Lessor; (iii) the execution and delivery of the documents referred to in (i) above by the Lessor does not violate the charter or by-laws of the Lessor or any Federal or New York State laws or regulations governing the banking or trust powers of the Lessor or, to the best knowledge and belief of such counsel after due inquiry, of any indenture, agreement, or other instrument, license, judgment or order applicable to the Lessor; (iv) no approval, consent, order, authorization, registration or notice is required (except as shall have been duly obtained or given, specifying the same) for the carrying out by the Lessor of any of the transactions con-

templated by the agreements referred to in (i) above or by any (X) Federal governmental authority or agency pursuant to any Federal law governing the banking or trust powers of the Lessor or (Y) New York State governmental authority or agency pursuant to New York State banking law; and (v) such other matters incident to the foregoing as the Bank may reasonably request.

(h) The Bank shall have received a favorable opinion of Messrs. White & Case, as special tax counsel to the Bank, dated such Closing Date, addressed to and in form and substance satisfactory to the Bank, to the effect that for federal income tax purposes: (i) the Lease will be treated as a lease under which Chicago and North Western Railway Company will be the lessee and the Bank will be the owner and the lessor of the Units; (ii) the Bank will be treated as the original user of the Units to the extent of that portion of the Acquisition Price of such Units which is properly attributable to the Reconstruction Cost incurred after the Bank acquired the Units; (iii) the Reconstruction Cost will qualify as "new section 38 property" for purposes of investment credit and the Bank is entitled to claim the investment credit under Section 38 of the Internal Revenue Code of 1954, as amended (the "Code") and the regulations thereunder, subject to the limitations of Section 46(a)(2) of the Code; (iv) the Bank will be entitled to elect to use any of the methods of accelerated depreciation described in Section 167(b)(2) or (3) of the Code with respect to that portion of the Acquisition Price of any Unit which constitutes the Reconstruction Cost and the original use of which is considered to commence with the Bank as described above in clause (ii); (v) the Bank will be entitled to depreciation deductions under any allowable method other than accelerated methods

for that portion of the Acquisition Price of any Unit for which the original use is not deemed to have commenced with the Bank and which does not qualify for the investment credit and (vii) the Bank will be entitled to deductions for interest payable by it pursuant to the Security Documents.

(i) The Lessor and the Bank shall have received a favorable opinion of the Vice President—Law of the Seller, dated such Closing Date, addressed to and in form and substance satisfactory to the Lessor and the Bank to the effect that: (i) Seller has the full power, authority and legal right to enter into and perform the the Hulk Purchase Agreement and it constitutes the legal, valid and binding obligation of the Seller enforceable against the Seller in accordance with the terms thereof subject as to enforceability to any applicable bankruptcy, insolvency or other laws affecting creditors' rights generally, (ii) the Seller's Bills of Sale for each Unit constitute effective instruments for the conveyance of title for such Unit to the Lessor, (iii) good and marketable title to the hulks has been duly conveyed by Seller to Lessor under the Hulk Purchase Agreement prior to the commencement of reconstruction of the hulks, and (iv) good and marketable title to such Units has been duly conveyed by Seller to the Lessor free and clear of all charges, encumbrances, claims and security interests of any kind.

(j) The Bank shall have received a copy of the opinion of Messrs. Cravath, Swaine & Moore, as special counsel for the Vendor and the Investors, in form and substance as required by Article 3 of the Security Documents.

(k) All proceedings and documents in connection with the transactions contemplated by this Lease shall

be satisfactory in form and substance to the Bank and its counsel and the Bank and its counsel shall have received counterparts or copies of all such documents together with such other evidence as the Bank or such counsel may reasonably request in order to establish the consummation of the transactions contemplated by this Lease and compliance with the conditions set forth in this Section.

In the event of any assignment by Lessee pursuant to Section 19, the conditions to be met and the opinions prescribed in this Section 26 may be accomplished by the assignee and its appropriate officers, and such conditions and opinions may reflect such changes as may be appropriate due to such assignment.

SECTION 27. NOTICES. All notices required under the terms and provisions hereof shall be in writing, and any such notice shall become effective when delivered or deposited in the United States mail, with proper postage for certified mail prepaid, addressed, if to Lessee, at 400 West Madison Street, Chicago, Illinois 60606, Attention: Vice President—Finance, and if to Lessor addressed to it at its office at 16 Wall Street, New York, New York 10015. Attention: Corporate Trust Division, or, as to either party, at such other address as such party shall from time to time designate in writing to the other party. Copies of all such notices shall be mailed to the Bank at 231 South LaSalle Street, Chicago, Illinois 60093, Attention: Terrence J. Bruggeman.

SECTION 28. MISCELLANEOUS. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without in-

validating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law Lessee hereby waives any provision of law which renders any provision hereof prohibited or unenforceable in any respect or which might require Lessor to mitigate damages other than as expressly provided herein. No term or provision of this Lease may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which the enforcement of the change, waiver, discharge or termination is sought. This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to Lessee any right, title or interest in any Unit except as a Lessee only. All computations of interest and amounts equivalent to interest under this Lease shall be made on the basis of a 360-day year. The captions in this Lease are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. This Lease 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. Although this Lease is dated as of February 1, 1972 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

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

CHICAGO AND NORTH WESTERN RAILWAY  
COMPANY,

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*

BANKERS TRUST COMPANY, as Trustee

By .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....  
*Assistant Secretary*



**SCHEDULE A TO LEASE AGREEMENT**

Quantity	Description of Equipment	Railroad's Road Numbers (inclusive) *	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price	
			Per Unit	Total	Per Unit	Total	Per Unit	Total
10	EMD- Diesel Locomotives F7	415, 417-425	\$22,000	\$ 220,000	\$113,741.90	\$1,137,419	\$135,741.90	\$1,357,419
9	EMD- Diesel Locomotives GP9R	4301-4309 ✓	40,000	360,000	106,255.33	956,298	146,255.33	1,316,298
3	EMD- Diesel Locomotives GP9	4501-4503	45,000	135,000	106,255.33	318,766	151,255.33	453,766
7	EMD- Diesel Locomotives GP9	4320-4326	45,000	315,000	98,865.28	692,057	143,865.28	1,007,057
6	EMD- Diesel Locomotives SD7	6616-6621	40,000	240,000	120,665.50	723,993	160,665.50	963,993
10	EMD- Diesel Locomotives GP7	4310-4319	35,000	350,000	105,146.70	1,051,467	140,146.70	1,401,467
<u>45</u>				<u>\$1,620,000</u>		<u>\$4,880,000</u>		<u>\$6,500,000</u>

## SCHEDULE A TO LEASE AGREEMENT—(Continued)

### Specifications

The Railroad will repair and reconstruct the Units in accordance with AAR rules and to conform with the United States Safety Appliance standards and Department of Transportation locomotive inspection rules and regulations and otherwise in accordance with this Agreement, including the following:

- (1) Stripping of locomotive,
- (2) Removal of engine, main generator, auxiliary generator and traction motors,
- (3) Rebuilding of engine, main generator, auxiliary generator and traction motors (work to be performed by qualified subcontractor),
- (4) Installation of rebuilt engine, main generator, auxiliary generator and traction motors,
- (5) Rewiring of low and high voltage circuitry,
- (6) Installation of new design control stand and control equipment,
- (7) Installation of 26-L brake equipment,
- (8) Modification of car body to incorporate low profile front hood (SD-7, GP-7, GP-9R, and GP-9 units only),
- (9) Installation of snow plows to front end of unit (SD-7, GP-7, GP-9R and GP-9 units only),
- (10) Removal of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (11) Rebuilding of Cummins diesel engines and 440 volt alternators (F-7 units only),
- (12) Installation of rebuilt Cummins diesel engines and 440 alternator (F-7 units only),
- (13) Installation of chemical toilet units,
- (14) Overhauling of trucks,
- (15) Repairing of unit body and underframe as required, and
- (16) Scraping, painting and stenciling.

**EXHIBIT A  
TO  
LEASE AGREEMENT**

**CERTIFICATE OF ACCEPTANCE**

This CERTIFICATE OF ACCEPTANCE, dated as of \_\_\_\_\_, 1972, executed and delivered by Chicago and North Western Railway Company, a Wisconsin corporation ("Lessee") to Bankers Trust Company, as Trustee under the Trust Agreement dated as of January 12, 1972 (the "Trust Agreement"), between the Owner named therein and said Trustee (herein, in its capacity as such Trustee, being called "Lessor") and to The First Pennsylvania Banking and Trust Company, as agent under the Finance Agreement dated as of February 1, 1972,

W I T N E S S E T H :

WHEREAS, Lessor and Lessee have heretofore entered into that certain Lease Agreement dated as of February 1, 1972 (herein called the "Lease" and the terms defined therein being hereinafter used with the same meaning), which Lease provides for the execution and delivery from time to time of Certificates of Acceptance substantially in the form hereof for the purpose of confirming delivery and acceptance of the Units leased under the Lease;

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

1. Lessee hereby accepts and leases from Lessor under the Lease, the Units or Unit (the "Delivered Unit") which are described below:

<u>Description of Unit</u>	<u>Lessor's Road Numbers</u>	<u>Acquisition Price of Unit</u>
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As authorized representative of the Lessor, the Delivered Units are also hereby accepted on behalf of the Lessor under the Security Documents.

2. The Acceptance Date of the Delivered Unit is the date of this Certificate of Acceptance set forth in the opening paragraph hereof.

3. Lessee hereby confirms to Lessor and Vendor that the Delivered Unit has been duly inspected in accordance with Section 2 of the Lease and Article 2 of the Security Documents and duly marked in accordance with the terms of Section 4 of the Lease and Article 9 of the Security Documents and that Lessee has accepted the Delivered Unit for all purposes hereof and of the Lease and Lessor has accepted the Delivered Units for all purposes hereof and of the Security Documents; provided, however, that nothing contained herein or in the Lease shall in any way diminish or otherwise affect any right which Lessee or Lessor may have with respect to the Delivered Unit against the Railroad or any subcontractor of the Railroad under the Security Documents.

IN WITNESS WHEREOF, Lessee has caused this Certificate of Acceptance to be duly executed as of the day and year first above written and to be delivered in the State of New York.

CHICAGO AND NORTH WESTERN  
RAILWAY COMPANY, as Lessee

By .....  
(Title)