

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT  
Dated as of April 1, 1972  
among  
FIRST SECURITY BANK OF UTAH, N. A.,  
as Agent,  
BURLINGTON NORTHERN INC.  
and  
NORTHWESTERN NATIONAL BANK  
OF MINNEAPOLIS

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**RECONSTRUCTION AND CONDITIONAL SALE**

**AGREEMENT** dated as of April 1, 1972, among FIRST SECURITY BANK OF UTAH, N. A. (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of April 1, 1972; NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, a national banking association (hereinafter called the Company); and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Railroad).

WHEREAS the Company has acquired or will acquire all right, title and interest in certain Railroad equipment (hereinafter called the Hulks) from the Railroad pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement), dated as of March 1, 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 Vendor has acquired or will acquire security title to 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 Company and the Company has agreed to purchase the Hulks as so reconstructed (the reconstructed equipment described under Group A Equipment in Schedule A hereto being hereinafter called the Group A Equipment; the reconstructed equipment described under Group B Equipment in Schedule A hereto being hereinafter called the Group B Equipment; and the Group A Equipment and the Group B Equipment being hereinafter collectively called the Equipment); and

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

WHEREAS the Company and the Railroad are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease) 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 Company 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 promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Railroad will cause the Hulks to be reconstructed into the Equipment as described in Schedule A hereto and will deliver the Equipment to the Company on behalf of the Vendor and the Company will accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Company, 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 Company that the design, quality and component parts of the Equipment will conform to all Department of Transportation 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, on behalf of the Vendor, to the Company at such point or points within the United States of America as shall be specified by the Railroad.

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 March 1, 1973, 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 Company 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.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Company (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 Company 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 Company (who may be an employee of the Railroad) shall execute and deliver to the Railroad 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 Company 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.

ARTICLE 3. *Purchase Price and Payment.* The cost of the Hulks (the "Hulk Purchase Price") and the base reconstruction cost per unit of the Equipment are set forth in Schedule A hereto. The base reconstruction cost shall not exceed the actual cost to the Railroad of doing the reconstruction work plus a reasonable overhead and profit factor, and is subject to such increase or decrease as is agreed to by the Railroad and the Company. The term "Reconstruction Cost" as used herein means the base reconstruction cost set forth in Schedule A, as so increased or decreased, and the term "Purchase Price" as used herein means the sum of the Hulk Purchase Price and the Recon-

struction Cost. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Purchase Prices as set forth in the invoice or invoices for the units of Equipment (said invoiced prices being hereinafter called the Invoiced Purchase Prices) for which settlement has theretofore been or is then being made under this Agreement would, but for the provisions of this sentence, exceed \$616,000 in the case of the Group A Equipment and \$8,477,500 in the case of the Group B Equipment (or such higher amounts as the Company may at its option agree to), the Railroad, upon request from the Company, will enter into an agreement excluding from this Agreement such unit or units of Equipment, then proposed to be settled for and specified by the Company, as will reduce such aggregate Invoiced Purchase Prices to not more than \$616,000 in the case of the Group A Equipment and \$8,477,500 in the case of the Group B Equipment (or such higher amounts as aforesaid).

For the purpose of settlement therefor, the Equipment shall be divided into not more than three groups of units of the Equipment (each such group being hereinafter called a Group) unless the Company, the Vendor and the Railroad shall otherwise agree; *provided, however*, that the aggregate Purchase Price of all Groups settled for prior to October 1, 1972, shall not exceed \$4,546,713. The term "Closing Date" with respect to any Group shall mean such date (not earlier than September 1, 1972 and not later than March 1, 1973, 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 Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Company 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 Salt Lake City, Utah or New York, New York, are authorized to remain closed.

The Company 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 (i) an amount equal to 27.75% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 72.25% of the aggregate of the Purchase Price of all units of the Group A Equipment or Group B Equipment, as the case may be, for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the sum of \$445,000 in the case of Group A Equipment and \$6,125,000 in the case of Group B Equipment and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) in respect of Group A Equipment or Group B Equipment, as the case may be; and

(b) In semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Price of the units of the 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 instalments of the Conditional Sale Indebtedness in respect of the Group A Equipment and the Group B

Equipment (hereinafter called the Group A Conditional Sale Indebtedness and the Group B Conditional Sale Indebtedness, respectively) shall be payable on September 1, 1973, and subsequent instalments shall be payable semiannually thereafter on each March 1 and September 1 (or, if any such date is not a business day, on the next succeeding business day) to and including March 1, 1982, in the case of the Group A Conditional Sale Indebtedness and to and including March 1, 1987, in the case of the Group B Conditional Sale Indebtedness. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date upon which such Conditional Sale Indebtedness was incurred at the rate of 8% per annum in respect of the Group A Conditional Sale Indebtedness and at the rate of 8¼% per annum in respect of the Group B Conditional Sale Indebtedness, and such interest shall be payable, to the extent accrued, on each March 1 and September 1 (or, if any such date is not a business day, on the next succeeding business day) commencing March 1, 1973. The principal amount of the Group A Conditional Sale Indebtedness payable on each of the 19 semiannual payment dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each payment date shall be substantially equal and such 19 instalments of principal and interest will completely amortize the Group A Conditional Sale Indebtedness. The principal amount of the Group B Conditional Sale Indebtedness payable on each of the 29 semiannual payment dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each payment date shall be substantially equal and such 29 instalments of principal and interest will completely amortize the Group B Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Railroad promptly after each Closing Date a payment schedule showing the respec-

tive 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 Company will pay interest, to the extent that it shall be legally enforceable, at the rate of  $9\frac{1}{4}\%$  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. Except as provided in Article 6 hereof, the Company 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 Company 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 by the Vendor to the Railroad.

The Vendor shall be under no obligation to make payment to the Railroad 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 and the Certificate or Certificates of Delivery contemplated by § 1 of the Lease with respect to the Equipment in the Group;

(b) Invoice or Invoices of the Railroad for the reconstruction of the Equipment in the Group for the Hulks so reconstructed accompanied by or having endorsed thereon a certification by the Company as to the correctness of the price stated therein and a certification by the Railroad that the total price does not exceed the price that would be charged by an independent car builder for comparable equipment;

(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) security title to the units of Equipment in such Group is validly vested in the Vendor, free of all claims, liens, security interests and other encumbrances except only the rights of the Company under this Agreement, and the rights of the Railroad under the Lease, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement or this Agreement, 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 Dis-

free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company 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 Company 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 counsel for the Vendor) or unless the Company shall have approved the payment thereof.

ARTICLE 6. *Maintenance and Repair; Casualty Occurrences.* The Company 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 Company, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being herein called a Casualty Occurrence), the Company 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 Company may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the next succeeding March 1 or September 1 (which-

ever is earlier, but in no event earlier than September 1, 1973), the Company 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 determined as of such March 1 or September 1 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 in respect of the unit suffering the Casualty Occurrence, and the Company 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 Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

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 March 1 or September 1 (as the case may be) on 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 Group A Equipment or Group B Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Group A Equipment or the Group B Equipment, respectively, in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group A Equipment or the Group B Equipment, as the case may be.

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 Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company 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 Company in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Company 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 circumstances 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 Company. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Company or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; *provided, however,* that after the payment by the Railroad to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Company by reason of such payment, to the extent, but only to the extent, that the Company has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Company to the Vendor hereunder.

ARTICLE 8. *Reports and Inspections.* On or before March 31 in each year, commencing with the year 1973, the Company shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding

December 31 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Company will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be re-

placed promptly any such name and words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that

such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Company will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendor, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents

served by it upon the Railroad or served by the Railroad upon it in connection therewith.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Company shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or discharge any and all sums claimed by any party from, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect

to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities and Warranties.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains

free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company 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 Company 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 counsel for the Vendor) or unless the Company shall have approved the payment thereof.

ARTICLE 6. *Maintenance and Repair; Casualty Occurrences.* The Company 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 Company, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being herein called a Casualty Occurrence), the Company 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 Company may receive notice thereof under the Lease), cause the Vendor to be fully informed in regard thereto. On the next succeeding March 1 or September 1 (which-

ever is earlier, but in no event earlier than September 1, 1973), the Company 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 determined as of such March 1 or September 1 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 in respect of the unit suffering the Casualty Occurrence, and the Company 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 Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

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 March 1 or September 1 (as the case may be) on 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 Group A Equipment or Group B Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Group A Equipment or the Group B Equipment, respectively, in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group A Equipment or the Group B Equipment, as the case may be.

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 Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company 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 Company in any such obligations or payments the Railroad agrees punctually to perform or pay the same, irrespective of any enforcement against the Company 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 circumstances 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 Company. The Railroad hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Railroad hereunder.

In the event that the Railroad shall make any payments to the Vendor on account of its guaranty hereunder, the Railroad agrees that it shall not acquire any rights, by subrogation or otherwise, against the Company or with respect to any of the units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Railroad; *provided, however,* that after the payment by the Railroad to the Vendor of all sums payable under this Agreement, the Railroad shall, by subrogation, be entitled to the rights of the Vendor against the Company by reason of such payment, to the extent, but only to the extent, that the Company has received "income and proceeds from the Equipment" (as defined in Article 3 hereof) and has not applied amounts equal to such income and proceeds to the payment, in accordance with this Agreement and subject to the limitations contained in the last paragraph of said Article 3, of sums payable by the Company to the Vendor hereunder.

ARTICLE 8. *Reports and Inspections.* On or before March 31 in each year, commencing with the year 1973, the Company shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding

December 31 the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, such Equipment is marked as required by Article 9 hereof. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the continuance of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Company will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be re-

placed promptly any such name and words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Company in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Railroad or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that

such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Company will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment to the Vendor, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Railroad as permitted by, and for use as provided in, the Lease, but the rights of the Railroad and its permitted assigns (the Railroad hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, that so long as the Railroad shall not be in default under the Lease or under this Agreement in its capacity as guarantor or otherwise, the Railroad shall be entitled to the possession and use of the Equipment. The Company hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents

served by it upon the Railroad or served by the Railroad upon it in connection therewith.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Railroad or any affiliate of the Railroad (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Railroad or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Railroad or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Company shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Company will pay or discharge any and all sums claimed by any party from, through or under the Company or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect

to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and any appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessment or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. *Indemnities and Warranties.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of security title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when security title thereto remains

in the Vendor or the transfer of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Railroad. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

**The Vendor makes no warranties whether written, oral, statutory or implied (including the warranties of merchantability or fitness for a particular purpose), with respect to the Hulks or the Equipment or in connection with this Agreement or the delivery and sale of the Equipment hereunder.**

The Railroad warrants to the Vendor and the Company that the Hulks will be reconstructed in accordance with the Specifications and standards set forth or referred to in Article 1 hereof and warrants that the Equipment will be free from defects in material or workmanship or design under normal use and service. **This warranty is expressly in lieu of all other warranties, with respect to reconstruction, expressed or implied, including any implied warranty of merchantability (or fitness for a particular purpose).** The Railroad agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Company, every

claim, right and cause of action which the Railroad has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks which the Railroad has agreed to perform hereunder and the Railroad further agrees to execute and deliver to the Vendor and the Company all and every such further assurance as may be reasonably requested by the Vendor more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

The warranties and indemnities of the Railroad contained in this Article 13 and in any other Articles hereof and all other covenants and obligations of the Railroad contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessee, assignee or transferee of this Agreement or of any units of the Equipment reconstructed by the Railroad hereunder.

The Railroad further agrees with the Vendor that neither the inspection as provided in Article 2 hereof, nor any examination, nor the acceptance of any units of the Equipment by the Company under Article 2 hereof shall be deemed a waiver by the Vendor or the Company of any of their rights under this Article 13.

The Railroad agrees to indemnify, protect and hold harmless the Vendor and the Company from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Company because of the use or operation of the Equipment or reconstruction of the Hulks or any unit thereof, or because of any design, article or material infringing or claimed to infringe on any patent or other right.

The Railroad agrees to indemnify and save harmless the Vendor and the Company against any charge or claim made against either of them and against any expense, loss or liability (including but not limited to counsel fees and ex-

penses, patent liabilities, penalties and interest) which the Vendor or the Company may incur in any manner by reason of entering into or performing the Hulk Purchase Agreement, this Agreement, any of the instruments or agreements referred to therein or herein or contemplated thereby or hereby or the ownership of, or which may arise in any manner out of or as the result of the ordering, acquisition, purchase, reconstruction, use, operation, condition, delivery, rejection, storage or return of, any of the Hulks or any units of the Equipment and to indemnify and save harmless the Vendor and the Company against any charge, claim, expense, loss or liability on account of any accident in connection with the reconstruction, operation, use, condition, possession or storage of any of the Hulks or any units of the Equipment resulting in damage to property or injury or death to any person. The indemnities contained in this Article shall survive delivery of the Equipment and the performance of all other obligations under this Agreement and the Hulk Purchase Agreement and the termination of this Agreement and/or the Hulk Purchase Agreement.

ARTICLE 14. *Assignments.* The Company will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including without limitation, rights and remedies against the Company and the Railroad) and (ii) provides that the Company shall remain liable for all the obligations of the Company under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the

Company and the benefits arising from the undertakings of the Railroad hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Railroad from, any of the obligations of the Railroad to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Company and the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Railroad, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less

than all such Equipment, such cost shall be borne by such assignee.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 3 hereof or in Article 22 hereof) to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for 15 days; or

(b) The Company or the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in 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, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Company or the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad or the Company hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Company or the Railroad under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Railroad, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the Railroad, as the case may be, or for their respective property in 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 Company 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 Company 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 Company 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  $9\frac{1}{4}\%$  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 any property of the Company, subject to the limitations of Article 3 hereof, or the Railroad wherever situated. The Company or the Railroad, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Company and the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of

termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company and the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Railroad set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Company or the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Company, the Railroad or any other person and for such purpose may enter upon the premises of the Company or the Railroad or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall (subject to the rights of the Railroad set forth in Article 11 hereof), at its own expense forthwith and in the usual manner, cause the Equipment to be moved

to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company and/or the Railroad requiring specific performance hereof. The Company and the Railroad hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of all obligations under this Agreement including the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to take possession of or to retain the Equipment shall be given to the Company and the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the

second proviso below, all the Company's rights in the Equipment shall thereupon terminate and all payments made by the Company and the Railroad may be retained by the Vendor as compensation for the use of the Equipment and in satisfaction of all obligations under this Agreement including the entire indebtedness in respect of the Purchase Price; *provided, however*, that if the Company, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; *provided, further*, that if the Company, the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any manner other than sale, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Company, the Railroad and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Railroad set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof,

free from any and all claims of the Company, the Railroad or any other party claiming from, through or under the Company or the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Company should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place 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 Company 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 21 hereof. If such sale shall be a private sale, it

shall be subject to the rights of the Company 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 Company 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 Company or the Railroad shall not otherwise alter or affect the Vendor's rights or the Company'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 Company'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 Company shall, subject to the limitations of Article 3 hereof, pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company. 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 Company or the Railroad, as the case may be, to the extent of their respective interests therein.

The Company will, subject to the limitations of Article 3 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 Company 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 Company 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 Company or 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 Company 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 title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company 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. *Payment of Expenses.* The Company will pay all reasonable costs and expenses incident to the preparation and execution of this Agreement and the Finance Agreement, and any instrument supplemental or

related hereto or thereto, including all fees and expenses of special counsel for the Vendor and the Investors.

ARTICLE 20. *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 Company 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 Company and the Railroad.

ARTICLE 21. *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 79 South Main Street, Salt Lake City, Utah 84111, Attention: Corporate Trust Department,

(b) to the Company, at 7th and Marquette Streets, Minneapolis, Minnesota 55480, Attention: Thomas R. Purcell, President, Lease Northwest, Inc.,

(c) to the Railroad, at 176 East Fifth Street, St. Paul, Minnesota 55101,

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in

writing to the Company, 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.

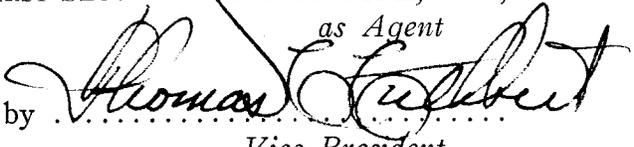
ARTICLE 22. *Immunities; Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendor, the Company or the Railroad, solely by reason of the fact that such person is an incorporator, stockholder, director, or officer, 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 Company under the first paragraph of Article 6 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 Company shall not be obligated personally to perform such obligations and 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.

ARTICLE 23. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota; *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 24. *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 April 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.

FIRST SECURITY BANK OF UTAH, N.A.,  
[CORPORATE SEAL] *as Agent*  
by  *Vice President*

Attest:  
  
*Trust Officer*

BURLINGTON NORTHERN INC.,

by W.K. Bush .....  
Vice President

[CORPORATE SEAL]

Attest:

[Signature] .....  
~~Assistant~~ Secretary

NORTHWESTERN NATIONAL BANK  
OF MINNEAPOLIS,

by [Signature] .....  
Vice President

[CORPORATE SEAL]

and [Signature] .....  
Vice President

Attest:

[Signature] .....  
Vice President

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this 5th day of June, 1972, before me personally appeared Thomas C. Aubert, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, 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 national association.

My Commission Expires March 3, 1975 *A. Sheri Stark*  
Notary Public

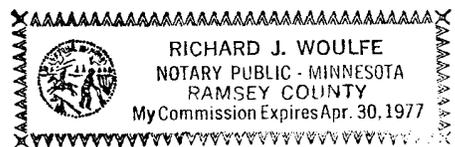
[NOTARIAL SEAL]

STATE OF MINNESOTA }  
COUNTY OF RAMSEY } ss.:

On this 23rd day of June, 1972, before me personally appeared W. K. BUSH, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., 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.

*Richard J. Woulfe*  
Notary Public

[NOTARIAL SEAL]



STATE OF MINNESOTA }  
COUNTY OF HENNEPIN } ss.:

On this 23 day of June, 1972, before me personally appeared David W. Cost and H.C. Benson, to me personally known, each of whom, being by me duly sworn, says that he is a Vice President of NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, that the seal affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[NOTARIAL SEAL]

**SCHEDULE A**

**Group A Equipment**

Quantity	Description of Equipment	Railroad's Road Numbers (both inclusive)	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price		Place of Delivery
			Per Unit	Total	Per Unit	Total	Per Unit	Total	
150	70-ton Hopper Cars	515750-515899	\$395	\$ 59,250	\$3,711	\$ 556,650	\$4,106	\$ 615,900	Brainerd, Minnesota
250	40' Box Cars	198500-198749	\$440	\$110,000	\$3,556	\$ 889,000	\$3,996	\$ 999,000	St. Cloud, Minnesota
150	Log Flat Cars	634150-634299	339	50,850	3,902	585,300	4,241	636,150	South Tacoma, Washington
250	40' Box Cars	198750-198999	440	110,000	4,041	1,010,800	4,481	1,120,250	St. Cloud, Minnesota
350	52' Gondola Cars	560000-560349	609	213,150	4,529	1,585,150	5,138	1,798,300	Brainerd, Minnesota
200	70-ton Covered Hopper Cars	430300-430499	472	94,400	3,284	656,800	3,756	751,200	St. Cloud, Minnesota
400	50' Box Cars	245000-245399	508	203,200	4,456	1,782,400	4,964	1,985,600	St. Cloud, Minnesota
239	50' Box Cars	245400-245638	508	121,412	4,456	1,064,984	4,964	1,186,396	St. Cloud, Minnesota

**Group B Equipment**

Quantity	Description of Equipment	Railroad's Road Numbers (both inclusive)	Hulk Purchase Price		Base Reconstruction Cost		Purchase Price		Place of Delivery
			Per Unit	Total	Per Unit	Total	Per Unit	Total	
250	40' Box Cars	198500-198749	\$440	\$110,000	\$3,556	\$ 889,000	\$3,996	\$ 999,000	St. Cloud, Minnesota
150	Log Flat Cars	634150-634299	339	50,850	3,902	585,300	4,241	636,150	South Tacoma, Washington
250	40' Box Cars	198750-198999	440	110,000	4,041	1,010,800	4,481	1,120,250	St. Cloud, Minnesota
350	52' Gondola Cars	560000-560349	609	213,150	4,529	1,585,150	5,138	1,798,300	Brainerd, Minnesota
200	70-ton Covered Hopper Cars	430300-430499	472	94,400	3,284	656,800	3,756	751,200	St. Cloud, Minnesota
400	50' Box Cars	245000-245399	508	203,200	4,456	1,782,400	4,964	1,985,600	St. Cloud, Minnesota
239	50' Box Cars	245400-245638	508	121,412	4,456	1,064,984	4,964	1,186,396	St. Cloud, Minnesota

**SCHEDULE A—(Continued)****Specifications**

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Specifications</u>
250	40' Box Cars	CRP-4-72, dated March 1, 1972
150	70-Ton Hopper Cars	CRP-2-72, dated March 1, 1972
150	Log Flat Cars	CRP-16-72, dated March 1, 1972
250	40' Box Cars	CRP-5-72, dated March 1, 1972
350	52' Gondola Cars	CRP-3-72, dated March 1, 1972
200	70-Ton Covered Hopper Cars	CRP-8-72, dated March 1, 1972
400	50' Box Cars	CRP-6-72, dated March 1, 1972
239	50' Box Cars	CRP-13-72, dated March 1, 1972