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COMMERCIAL BANK OF MINNEAPOLIS

LEASE OF RAILROAD EQUIPMENT

Dated as of April 1, 1972

between

**NORTHWESTERN NATIONAL BANK
OF MINNEAPOLIS**

and

BURLINGTON NORTHERN INC.

LEASE OF RAILROAD EQUIPMENT, dated as of April 1, 1972, between NORTHWESTERN NATIONAL BANK OF MINNEAPOLIS, a national banking association (hereinafter called the Lessor) and BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Reconstruction and Conditional Sale Agreement dated as of April 1, 1972 (hereinafter called the Reconstruction and Conditional Sale Agreement), with the Lessee and FIRST SECURITY BANK OF UTAH, N.A., as Agent (hereinafter called the Vendor), wherein the Vendor has agreed to sell to the Lessor its interest in the railroad equipment described in Schedule A hereto after it has been reconstructed by the Lessee;

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted and settled for under the Reconstruction and Conditional Sale Agreement on or prior to March 1, 1973 (such units described under Group A Units in Schedule A hereto being hereinafter called the Group A Units; such units described under Group B Units in Schedule A hereto being hereinafter called the Group B Units; and the Group A Units and the Group B Units being hereinafter collectively called the Units), at the rentals and for the terms and upon the conditions hereinafter provided;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder or under the Reconstruction and Conditional Sale

Agreement, subject to all the rights and remedies of the Vendor under such Reconstruction and Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered 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 Reconstruction and Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Group A Unit subject to this Lease 20 consecutive semiannual payments and as rental for each Group B Unit subject to this Lease 30 consecutive semiannual payments, each payable on March 1 and September 1 in each year, commencing March 1, 1973; *provided, however*, that if any of the payment dates referred to above is not a business day, the payment shall be payable on the next succeeding business day. The first such semiannual rent payment shall be in an amount equal to 5.95241% of the Purchase Price of each Group A Unit and 4.50027% of the Purchase Price of each Group B Unit, plus an amount equal to .02222% and .022917%, respectively, for each Group A Unit and Group B Unit for each day elapsed from and including the date such Unit is settled for under the Reconstruction and Conditional Sale Agreement to March 1, 1973. The remaining semiannual rental payments in respect

of each Unit subject to this Lease shall be an amount equal to 5.95241% of the Purchase Price of each Group A Unit and 4.50027% of the Purchase Price of each Group B Unit.

The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available Salt Lake City funds (including but not limited to the payments required under § 6 hereof) for the account of the Lessor, care of the Vendor at its office at 79 South Main Street, Salt Lake City, Utah 84111, attention of Corporate Trust Department. Such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Reconstruction and Conditional Sale Agreement accrued at the time such payments are due hereunder and, so long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Reconstruction and Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid directly to the Lessor at its offices at 7th and Marquette Streets, Minneapolis, Minnesota 55480.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or

unenforceability or lack of due authorization of this Lease, the Hulk Purchase Agreement or the Reconstruction and Conditional Sale Agreement or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate six months after the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, or under the Reconstruction and Conditional Sale Agreement in its capacity as guarantor or otherwise, are subject to the rights of the Vendor under the Reconstruction and Conditional Sale Agreement. If an event of default should occur under the Reconstruction and Conditional Sale Agreement, the Vendor may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not so in default under this Lease or under the Reconstruction and Conditional Sale Agreement (in its capacity as guarantor or otherwise). If a Declaration of Default (as defined in the Reconstruction and Conditional Sale Agreement) should be made under the Reconstruction and Conditional Sale Agreement due to an event of default which is occasioned by an act or omission of the Lessor here-

under or is attributable to the Lessor under the Reconstruction and Conditional Sale Agreement and which is not occasioned by an act or omission of the Lessee hereunder and is not attributable to the Lessee under the Reconstruction and Conditional Sale Agreement as aforesaid, and if such Declaration of Default shall not have been rescinded by the Vendor within 30 days of the making thereof, or if the Vendor theretofore has indicated either in writing to the Lessor or the Lessee or by the commencement of the remedies specified under Article 16 of the Reconstruction and Conditional Sale Agreement that it will not rescind such Declaration of Default, the Lessee, without penalty, may terminate this Lease.

§ 4. *Identification Marks.* The Lessee, so long as this Lease shall remain in effect, will cause each Unit to be kept numbered with the identifying number set forth in Schedule A to the Reconstruction and Conditional Sale Agreement and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such 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 title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Reconstruction and Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying

numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee, so long as this Lease shall remain in effect, will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or foreign taxes (other than any United States federal income tax [and, to the extent that the Lessor receives credit therefor against its United States federal income tax liability, any foreign income tax] payable by the Lessor in consequence of the receipt of payments provided herein and other than the aggregate of all franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith

(hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Reconstruction and Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Reconstruction and Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor. Prior to making such payment, the Lessor shall promptly notify Lessee of the impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such impositions, at its sole expense.

In the event that the Lessor shall become obligated to make any payment to the Vendor pursuant to Article 5 of the Reconstruction and Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable

the Lessor to fulfill completely its obligations pursuant to said Article 5.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, any imposition accrues or becomes payable or is levied or assessed which the Lessee is or will be obligated to pay or reimburse, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences; Insurance.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (each such occurrence being hereinafter called a Casualty Occurrence) during the term of this Lease, the Lessee shall, within eight days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor in writing with respect thereto. On the rental payment date next succeeding such notice the Lessee shall pay to the Lessor a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this

under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Depreciation Deductions and Interest Deductions (both as defined in § 14 hereof) which were lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default; and (3) all amounts, other than rentals, payable by the Lessee under §§ 6 or 9 or any other provision of this Lease and all damages and expenses, including reasonable attorneys' fees in addition thereto which the Lessor shall have sustained by reason of the breach of one or more of the representations, warranties and covenants (other than the covenant to pay rentals) made by the Lessee in this Lease (and from time to time after the date of such termination the Lessor may recover from the Lessee any and all additional such amounts, damages and expenses which may be payable by the Lessee or incurred or sustained by the Lessor), *provided, however*, that damages payable under clauses (1) and (2) of this paragraph shall be in lieu of all other damages in respect of rentals and the loss of tax benefits payable pursuant to this § 9(b).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby

waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and

risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performances of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee

shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon the lines of any affiliate or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Reconstruction and Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Reconstruction and Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which

shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety *provided* that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, (i) it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America, and (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada.

§ 12. *Return of Units upon Expiration of Term; Purchase and Renewal Options.* As soon as practicable on or after the expiration of the term of this Lease with respect to the Group A Units and the Group B Units, respectively, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of the Group A Units or the Group B Units, as the case may be, to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Units 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 as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under

this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee or its successors or assigns may elect, by written notice delivered to the Lessor not less than six months prior to the end of the term (whether original or extended) of this Lease (A) in respect of the Group B Units to extend the term of this Lease in respect of all but not fewer than all the Group B Units then covered by this Lease for a period of five years at a rental equal to the "Fair Rental

Value" of such Units, payable in ten semiannual payments on March 1 and September 1 in each year of the extended term and (B) in respect of the Group A Units and the Group B Units, to purchase all but not fewer than all the Group A Units or the Group B Units, as the case may be, then covered by this Lease at the end of the term of this Lease with respect to such Units for a purchase price equal to "Fair Market Value" of such Units as of the end of such term.

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 or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Fair Rental 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 lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the applicable term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor,

the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Reconstruction and Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same), with adequate corporate power to enter into the Reconstruction and Conditional Sale Agreement and this Lease;

B. the Reconstruction and Conditional Sale Agreement and this Lease have been duly authorized, executed and delivered by the Lessee and constitute a valid, legal and binding agreement of the Lessee, enforceable in accordance with their terms;

C. the Reconstruction and Conditional Sale Agreement and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and such filing, recording and deposit will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with

under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Depreciation Deductions and Interest Deductions (both as defined in § 14 hereof) which were lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default; and (3) all amounts, other than rentals, payable by the Lessee under §§ 6 or 9 or any other provision of this Lease and all damages and expenses, including reasonable attorneys' fees in addition thereto which the Lessor shall have sustained by reason of the breach of one or more of the representations, warranties and covenants (other than the covenant to pay rentals) made by the Lessee in this Lease (and from time to time after the date of such termination the Lessor may recover from the Lessee any and all additional such amounts, damages and expenses which may be payable by the Lessee or incurred or sustained by the Lessor), *provided, however*, that damages payable under clauses (1) and (2) of this paragraph shall be in lieu of all other damages in respect of rentals and the loss of tax benefits payable pursuant to this § 9(b).

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby

waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and

risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performances of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney-in-fact of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee

shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the next succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof upon its lines of railroad or upon the lines of any affiliate or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic, if customary at the time, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Reconstruction and Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation (which shall have duly assumed the obligations of the Lessee hereunder and under the Reconstruction and Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which

shall have acquired the railroad properties of the Lessee as an entirety or substantially as an entirety *provided* that such assignee or transferee will not, upon the effectiveness of such merger or consolidation, be in default under any provision of this Lease.

The Lessee agrees that during the term of this Lease, (i) it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America, and (ii) any use of any Unit outside the United States of America will be limited to incidental and temporary use in Mexico and Canada.

§ 12. *Return of Units upon Expiration of Term; Purchase and Renewal Options.* As soon as practicable on or after the expiration of the term of this Lease with respect to the Group A Units and the Group B Units, respectively, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of the Group A Units or the Group B Units, as the case may be, to the Lessor upon such storage tracks of the Lessee as the Lessee may designate and permit the Lessor to store such Units 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 as directed by the Lessor; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence (or to the extent otherwise provided by law) of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under

this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the term of this Lease.

Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee or its successors or assigns may elect, by written notice delivered to the Lessor not less than six months prior to the end of the term (whether original or extended) of this Lease (A) in respect of the Group B Units to extend the term of this Lease in respect of all but not fewer than all the Group B Units then covered by this Lease for a period of five years at a rental equal to the "Fair Rental

Value" of such Units, payable in ten semiannual payments on March 1 and September 1 in each year of the extended term and (B) in respect of the Group A Units and the Group B Units, to purchase all but not fewer than all the Group A Units or the Group B Units, as the case may be, then covered by this Lease at the end of the term of this Lease with respect to such Units for a purchase price equal to "Fair Market Value" of such Units as of the end of such term.

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 or (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

Fair Rental 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 lessee-user (other than a lessee-user currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the applicable term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or the Fair Rental Value of the relevant Units, such value shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor,

the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Opinion of Counsel.* On each Closing Date (as defined in the Reconstruction and Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation (specifying the same), with adequate corporate power to enter into the Reconstruction and Conditional Sale Agreement and this Lease;

B. the Reconstruction and Conditional Sale Agreement and this Lease have been duly authorized, executed and delivered by the Lessee and constitute a valid, legal and binding agreement of the Lessee, enforceable in accordance with their terms;

C. the Reconstruction and Conditional Sale Agreement and this Lease have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act; and such filing, recording and deposit will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with

any other federal, state or local government is necessary in order to protect the interests of the Vendor and the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Reconstruction and Conditional Sale Agreement or this Lease;

E. the entering into and performance of the Reconstruction and Conditional Sale Agreement or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or the Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 14. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits or other benefits as are provided to an owner of property by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), including (without limitation) :

(i) the investment credit (herein called the Investment Credit) which is or would be available to the Lessor pursuant to Section 38 and related sections of

the Code if it is assumed that the portion of the Purchase Price equal to the Reconstruction Cost (as defined in the Reconstruction and Conditional Sale Agreement) will qualify as “new section 38 property . . . placed in service by” the Lessor, having an “applicable percentage” of 100%, all within the meaning of Section 46(c) and 48(b) of the Code, and will continue to constitute “section 38 property”, within the meaning of Section 48(a) of the Code, at all times during the term of this Lease;

(ii) the depreciation deductions (herein called the Depreciation Deductions) which are or would be available to the Lessor under Section 167 of the Code and Regulations Section 1.167(a)-11 thereunder (as presently in effect) if it is assumed that the Units will at all times during the term of this Lease constitute “eligible property” within the meaning of paragraph (b)(2) of said Regulations Section and that the Lessor will be entitled to take into account depreciation deductions (A) computed with respect to the portion of the Purchase Price equal to the Reconstruction Cost over the asset depreciation period of 11 years pursuant to the double declining balance method of depreciation for the first taxable year and the sum of the years’ digits method of depreciation thereafter and (B) computed with respect to the portion of the Purchase Price equal to the Hulk Purchase Price (as defined in the Reconstruction and Conditional Sale Agreement) pursuant to the 150% declining balance method over the asset depreciation period of 11 years; in each case computing such deductions on the basis of the six-month convention established by said Regulations Section and computing such deductions to (but without taking into account) a salvage value of 15% reduced to 5% pursuant to Section 167(f) of the Code; and

(iii) the deduction (herein called the Interest Deduction) in each taxable year of the Lessor for all interest accrued during such year on the Conditional Sale Indebtedness (as defined in the Reconstruction and Conditional Sale Agreement), computed in accordance with Section 163 of the Code.

If for any reason (including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder or any other reason, whether similar or dissimilar to the foregoing, except as a direct result of the occurrence of any Excluded Event set forth below), the Lessor shall lose, or shall not have, or shall lose the rights to claim, or shall suffer a disallowance of or shall be required to recapture, all or any portion of the Investment Credit, the Depreciation Deductions, or the Interest Deduction (hereinafter each called a Benefit) with respect to all or part of any Unit, then the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Benefit has not been claimed, or (if claimed and then disallowed or required to be recaptured) on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, in the reasonable opinion of the Lessor, will cause the Lessor's net return in respect of such Unit under this Lease to equal the net return in respect of such Unit under this Lease that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor the amount of any interest which may be assessed by the United States against the Lessor attributable to the disallowance, recapture or loss of all or any portion of

the Benefit; *provided, however*, that such rental rate shall not be so increased if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of any Benefit with respect to all or part of such Unit as a direct result of the occurrence of any of the following events (“Excluded Events”):

(i) a Casualty Occurrence with respect to such Unit, if the Lessee shall have paid to the Lessor the amounts stipulated under § 6 hereof;

(ii) a voluntary transfer or other voluntary disposition by the Lessor of any interest in such Unit (except the transfer or disposition contemplated by the Transfer Agreement) or the voluntary reduction by the Lessor of its interest in the rentals from such Unit under the Lease, unless, in each case, an Event of Default shall have occurred and be continuing;

(iii) the amendment either of the Hulk Purchase Agreement, the Transfer Agreement or the Reconstruction and Conditional Sale Agreement without the prior written consent of the Lessee;

(iv) the failure of the Lessor to claim the Investment Credit, the Depreciation Deductions or the Interest Deduction, as applicable, in its federal income tax return for the appropriate year or the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in writing by the Lessee or not objected to in writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability for tax against which to credit such Investment

Credit or sufficient income to benefit from the ADR Deductions or the Interest Deduction, as applicable.

The Lessor agrees that if, in the opinion of its independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of any Benefit (with respect to part or all of any Unit) exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to the Lessor interest on the amount of the tax and interest paid attributable to the Benefit disallowed, required to be recaptured or lost, which interest shall be computed at the rate of $8\frac{1}{4}\%$ per annum from the date of payment of such tax and interest to the date the Lessee shall reimburse the Lessor for such tax and interest in accordance with the provisions of this § 14. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

§ 15. *Recording; Expenses.* The Lessee will cause this Lease, the Reconstruction and Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

The Lessee will undertake the filing, recording and depositing and re-filing, re-recording and redepositing required of the Lessor under Article 18 of the Reconstruction and Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and 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 the intention of this Lease or the Reconstruction and Conditional Sale Agreement; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, registering, recording or depositing, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Reconstruction and Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay or cause to be paid the reasonable costs and expenses involved in the preparation and printing of this Lease and the Lessee will pay the reasonable costs and expenses involved in the recording of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 16. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations when due hereunder shall result in the obligation on the part of the Lessee promptly to pay, to the extent legally enforceable, also an amount equal to $9\frac{1}{4}\%$ per annum of the overdue rentals for the period of time during which they are overdue.

§ 17. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 7th and Marquette Streets, Minneapolis, Minnesota 55480, attention Thomas R. Purcell, President, Lease Northwest, Inc.;

if to the Lessee, at 176 East Fifth Street, St. Paul, Minnesota 55101;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

§ 18. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating 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.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

§ 19. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease 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.

§ 20. *Law Governing.* The terms of this Lease 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.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

NORTHWESTERN NATIONAL BANK OF
MINNEAPOLIS,

by *Dund w. East*
Vice President.

[CORPORATE SEAL]

and *J. Benson*
Vice President.

Attest:
.....
[Signature]
Vice President.

BURLINGTON NORTHERN INC.,

by *W.K. Bush*
Vice President.

[CORPORATE SEAL]

Attest:
.....
[Signature]
Assistant Secretary.

SCHEDULE A**Group A Units**

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Lessee's Road Numbers (both inclusive)</u>	<u>Unit Purchase Price</u>	<u>Aggregate Purchase Price</u>
150	70-ton Hopper Cars	515750-515899	\$4,106	\$ 615,900

Group B Units

250	40' Box Cars	198500-198749	\$3,996	\$ 999,000
150	Log Flat Cars	634150-634299	4,241	636,150
250	40' Box Cars	198750-198999	4,481	1,120,250
350	52' Gondola Cars	560000-560349	5,138	1,798,300
200	70-ton Covered Hopper Cars	430300-430499	3,756	751,200
400	50' Box Cars	245000-245399	4,964	1,985,600
239	50' Box Cars	245400-245638	4,964	1,186,396