

9-058A314

**CALIFORNIA FIRST BANK** **ST**

EQUIPMENT LEASING DEPARTMENT, 1400 NORTH HARBOR  
P. O. BOX 669, FULLERTON, CALIFORNIA 92635  
(714) 992-6871

No. [REDACTED]  
Date FEB 27 1979  
Fee \$ 50.00

ICC Washington, D. C.

February 23, 1979

10155

COMMERCE COMMISSION RECEIVED RECORDATION NO. Filed 1425

Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

FEB 26 1979 FEB 27 1979 -3 30 PM

ADMINISTRATIVE SERVICE INTERSTATE COMMERCE COMMISSION

Dear Sir:

Enclosed herewith for recordation pursuant to Section 11303(a) of the Interstate Commerce Act, as amended, and the rules and regulations of the Commission thereunder are three executed copies of an Equipment Lease dated as of February 1, 1979, between California First Bank and Burlington Northern Inc.

The addresses of the parties to the document referred to above are as follows:

Lessor: California First Bank  
1400 N. Harbor Boulevard  
P.O. Box 669  
Fullerton, California 92635

Lessee: Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101

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I.C.C.  
FEE OPERATION BR.

The equipment covered by the above-referenced Equipment Lease consists of twenty-eight units of right-of-way equipment for use on the lines of railroad of Burlington Northern Inc. The serial or other identifying numbers of the units will be furnished supplementally.

Enclosed is a check in the amount of \$50.00 for the required recordation fee. Please accept for recordation two executed copies of the enclosed Equipment Lease, stamp the remaining copy with your recordation number and return it to the undersigned, along with your fee receipt, at the above-listed address.

Very truly yours,

CALIFORNIA FIRST BANK

By Leroy B. Onishi  
Leasing Officer

Registered Mail

Interstate Commerce Commission

Washington, D.C. 20423

3/1/79

OFFICE OF THE SECRETARY

Leroy B. Onishi  
Leasing Officer  
California First Bank  
Equipment Leasing Dept  
1400 North Harbor  
Fullerton, Calif. 92635

Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on

2/27/79

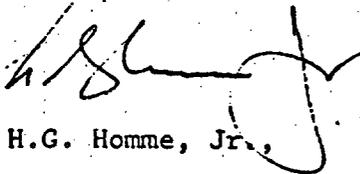
at

3:30pm

and assigned recordation number(s)

10155

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 10155 Filed 1425

FEB 27 1979 -3 30 PM

INTERSTATE COMMERCE COMMISSION

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EQUIPMENT LEASE

Dated as of February 1, 1979

Between

CALIFORNIA FIRST BANK,

as Lessor

and

BURLINGTON NORTHERN INC.

as Lessee

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## EQUIPMENT LEASE

EQUIPMENT LEASE, dated as of February 1, 1979, between CALIFORNIA FIRST BANK, a California corporation (herein called "Lessor"), and BURLINGTON NORTHERN INC, a Delaware corporation (herein called "Lessee").

In consideration of the mutual covenants and agreements hereinafter set forth, the parties hereto agree as follows:

1. Certain Definitions. In addition to the terms defined elsewhere in this Lease, the following terms shall have the following meanings:

(a) "Acquisition Agreement" shall mean each acquisition agreement between Lessor and Lessee pursuant to which Lessor agrees to purchase, on the terms and conditions set forth therein, units of equipment for leasing to Lessee pursuant to this Lease and the Lease Schedule or Schedules executed in connection with such acquisition agreement. The units of equipment intended to be so purchased pursuant to the Acquisition Agreement dated as of February 1, 1979, are described in Annex A hereto, and said Annex A shall be amended or supplemented from time to time to reflect the units of equipment to be purchased for leasing hereunder pursuant to any subsequent Acquisition Agreement and the units of equipment subject to this Lease.

(b) "Equipment" shall mean all units of equipment purchased by Lessor pursuant to an Acquisition Agreement and leased to Lessee pursuant to this Lease and the Lease Schedule or Schedules executed in connection with each such Acquisition Agreement.

(c) "Lease" shall mean this Equipment Lease, together with all Lease Schedules hereto, as amended or supplemented from time to time.

(d) "Lease Schedule" shall mean each Lease Schedule, executed in connection with an Acquisition Agreement, pursuant to which Equipment is leased to Lessee hereunder.

(e) "Business Day" shall mean any day other than a Saturday, Sunday or day in which commercial banking institutions in Los Angeles, California, or St. Paul, Minnesota, are authorized to be closed.

(f) The terms "Basic Rent Date," "First Basic Rent Date," "Last Basic Rent Date," "Interim Rent Date," "Daily Lease Rate Factor," "Basic Lease Rate Factor," "Lessor's Cost" and "Late Payment Rate" shall have the meanings with respect to a unit of Equipment set forth in the Lease Schedule applicable to such unit.

2. Lease. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, each unit of Equipment, subject to the terms and conditions of this Lease and the Lease Schedule applicable to such unit. It is understood and agreed that units of Equipment may be maintained or located at different business locations, may be scheduled at different times, may be leased for different periods, may require different rental rates or may require different taxation and accounting treatment from certain other units of Equipment and on account of any such differences, such units shall, at the discretion of Lessor, be leased pursuant to separate Lease Schedules hereto.

3. Term. The term of this Lease with respect to each unit of Equipment shall be as set forth in the Lease Schedule applicable to such unit, subject to any renewals or extensions pursuant to such Lease Schedule and subject to earlier termination pursuant to the terms of this Lease.

4. Rent. Lessee shall pay to Lessor as rent, with respect to each unit of Equipment, the following:

(a) as Basic Rent, on the Interim Rent Date, if any, and on each Basic Rent Date (each such Date being hereinafter sometimes called a "Rent Payment Date"), the amounts set forth in the Lease Schedule applicable to such unit; and

(b) as Supplemental Rent (Supplemental Rent and Basic Rent being hereinafter sometimes called "Rent"), the following amounts:

(i) on demand, any amount payable hereunder (other than Basic Rent and Stipulated Loss Value, as such term is hereinafter defined) which Lessee assumes the obligation to pay, or agrees to pay, under this Lease to Lessor or others;

(ii) on the dates provided herein, any amount payable hereunder as Stipulated Loss Value as set forth in the Lease Schedule applicable to such unit; and

(iii) on demand, interest (computed on the basis of a 360-day year of actual days elapsed) at the Late Payment Rate on any payment of Basic Rent, Stipulated Loss Value or other amount payable to Lessor hereunder, not paid when due for any period during which the same shall be overdue.

All payments provided for in this Lease to be made to Lessor shall be made by check, payable to the order of Lessor, at its offices at 1400 N. Harbor Boulevard, Fullerton, California, 92635, Attention of Equipment Leasing Department, or at such other place as Lessor or its assigns shall direct; or if Lessor so requests in writing, all such payments shall be made as specified by Lessor so that it shall have immediately available funds on the date such payments are due.

5. Net Lease; Non-terminability. This Lease is a net lease, and Lessee acknowledges and agrees that Lessee's obligation to pay all Rent and other monetary obligations of Lessee hereunder, and the rights of Lessor in and to such Rent and other obligations, shall be absolute and unconditional and shall not be subject to any abatement, reduction, set-off, defense, counterclaim or recoupment ("Abatements") for any reason whatsoever, including, without limitation, abatements due to any present or future claims of Lessee against Lessor under this Lease or otherwise, or against the manufacturer or vendor of any unit of Equipment. Except as otherwise expressly provided herein, this Lease shall not terminate, nor shall the obligations of Lessee be affected, by reason of any defect in or damage to, or any loss or destruction of, the Equipment or any unit thereof from any cause whatsoever, any liens, encumbrances or rights of others with respect thereto, the prohibition of or other restriction against Lessee's use of all or any of the units of Equipment, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any failure of Lessor to perform any obligation of Lessor to Lessee or any other person under this Lease, any Acquisition Agreement or any instrument or document executed in connection herewith, any insolvency of or the bankruptcy, reorganization or similar proceeding against Lessee, or for any other cause, whether similar or dissimilar to the foregoing, any present or future law, rule or regulation to the contrary notwithstanding, it being the express intention of Lessor and Lessee that all Rent and other monetary obligations of Lessee hereunder shall be, and continue to be, payable in all events unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the units of Equipment except in accordance with the express terms hereof. Each rental or other payment made by Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Lessor for any reason whatsoever.

6. Lessee's Selection, Inspection and Acceptance. Lessee has selected or shall select the type, quality and the manufacturer or the vendor of all Equipment. Lessee shall ensure that each unit of Equipment is properly invoiced and sold to Lessor, pursuant to an Acquisition Agreement, prior to or simultaneously with acceptance of such unit and execution of a Lease Schedule with respect thereto. Promptly upon delivery of each unit of Equipment and prior to or simultaneously with executing a Lease Schedule with respect thereto, Lessee, at its own expense, shall cause an authorized representative of Lessee to inspect and test such unit and (a) if such unit is found by Lessee to be in good order, to accept such unit, on behalf of and as an authorized representative of Lessor, or (b) if such unit is found by Lessee, acting in good faith, not to be in good order, to return such unit to the manufacturer or vendor thereof.

7. Lessor's Title; Equipment to be and Remain Personal Property. Title to the Equipment shall at all times remain in Lessor and at no time shall title become vested in Lessee. This is and is intended to be a true lease and not a lease intended as security or a lease in the nature of a security interest. Lessee shall acquire no right, title or interest in or to the Equipment, except the right to use the same as a lessee thereof pursuant to the terms of this Lease. It is the intention and understanding of both Lessor and Lessee, and Lessee shall take all such actions as may be required to assure, that the Equipment shall be and at all times shall remain personal property, notwithstanding the manner in which the Equipment may be attached or affixed to real property. Lessee shall give Lessor prompt notice of any circumstances which may permit any person to acquire, and shall obtain and record such instruments and take such steps as may be reasonably requested by Lessor to prevent any such person from acquiring, any rights in the Equipment by reason of the Equipment being claimed or deemed to be real property. If reasonably requested by Lessor, Lessee shall obtain and deliver to Lessor valid and effective waivers, in recordable form, by the owners, landlords and mortgagees of any real property upon which the Equipment is located or certificates of Lessee that it is the owner of such real property and that such real property is not leased and/or mortgaged.

8. DISCLAIMER OF WARRANTIES BY LESSOR. LESSOR DOES NOT MAKE, HAS NOT MADE, AND SHALL NOT BE DEEMED TO MAKE OR HAVE MADE, ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE DESIGN OR CONDITION OF THE EQUIPMENT, ITS MERCHANTABILITY, DURABILITY, SUITABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE EQUIPMENT, OR THE CONFORMITY OF THE EQUIPMENT TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER OR ORDERS RELATING THERETO OR TITLE TO THE EQUIPMENT OR ANY COMPONENT THEREOF, AND LESSOR HEREBY DISCLAIMS ANY SUCH REPRESENTATION OR WARRANTY (WHICH DISCLAIMER LESSEE HEREBY ACKNOWLEDGES). WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, LESSOR SHALL NOT BE LIABLE OR RESPONSIBLE FOR ANY DEFECTS, EITHER PATENT OR LATENT (WHETHER OR NOT DISCOVERABLE BY LESSEE OR LESSOR), IN ANY ITEM OF THE EQUIPMENT, OR FOR ANY DIRECT OR INDIRECT DAMAGE TO PERSONS OR PROPERTY RESULTING THEREFROM, OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT), OR FOR LESSEE'S LOSS OF USE OF ANY OF THE EQUIPMENT OR FOR ANY INTERRUPTION IN LESSEE'S BUSINESS CAUSED BY LESSEE'S INABILITY TO USE ANY OF THE EQUIPMENT FOR ANY REASON WHATSOEVER, it being agreed that all such risks, as between Lessor and Lessee, are to be borne solely by Lessee. Lessor hereby authorizes Lessee, so long as no Event of Default hereunder, or other event which with lapse of time or notice or both would constitute such an Event of Default, shall have occurred and be continuing, to assert and enforce during the term of this Lease, in the name and for the account of Lessor and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Lessor may have under any manufacturer's,

vendor's or dealer's warranty on the Equipment; provided, however, that Lessee shall indemnify, protect, save, defend and hold harmless Lessor from and against any and all claims, and all costs, expenses, damages, losses and liabilities incurred or suffered by Lessor in connection therewith, as a result of, or incident to, any action by Lessee pursuant to the above authorization.

9. Use of Equipment. Lessee agrees that the Equipment will be used and operated solely in the conduct of its business and in compliance with any and all insurance policy conditions and with all statutes, laws, ordinances, rules and regulations of any governmental body, agency or authority applicable to the use and operation of the Equipment. Lessee shall procure and maintain in effect all licenses, certificates, permits, approvals and consents required by federal, state or local laws or by any governmental body, agency or authority in connection with the delivery, installation, use and operation of the Equipment. The Equipment will at all times be and remain in the possession and control of Lessee, except as provided in Section 20 hereof. Lessee shall not change the location of the Equipment as specified in, and except as permitted by, the Lease Schedules without delivering proper written notice to Lessor of the new location to which the Equipment will be moved and receiving Lessor's prior written consent to such move, which consent shall not be unreasonably withheld. Except to the extent permitted by the Lease Schedules, the Equipment shall not be located outside the continental limits of the United States. Lessee shall use and operate the Equipment or cause it to be used and operated only by personnel authorized by Lessee, and Lessee shall use reasonable precautions to prevent loss or damage to the Equipment from fire and other hazards.

10. Maintenance and Repair of Equipment. Lessee agrees, at its own cost and expense, to keep, repair, maintain and preserve the Equipment in as good order and condition as when delivered to Lessee hereunder, ordinary wear and tear excepted. Any replacement or substitution made by Lessee upon the Equipment in connection with repair thereof shall be considered an accession to the Equipment, and title to such replacement or substitution part (any such replacement or substitution part being herein referred to as a "Replacement Part") shall upon installation or affixation thereof, automatically vest in Lessor. Effective upon installation or affixation of any Replacement Part, Lessor shall be deemed to have disclaimed ownership of the original part so replaced. Lessee may make any improvement or addition to the Equipment if such improvement or addition is separately identifiable by serial number or otherwise, will not impair the originally intended function or use of the Equipment and is readily removable without causing material damage thereto; such improvements or additions shall remain the property of Lessee or other owner thereof. Any other improvement or addition to the Equipment may be affixed or installed only with the prior written consent of Lessor, shall be considered an accession to the Equipment, and title to such other improvements or additions

shall, upon installation or affixation thereof, automatically vest in Lessor. Any improvement or addition remaining the property of Lessee or other owner thereof, as aforesaid, may (and, if requested by Lessor, shall) be removed by Lessee or such other owner at any time prior to the expiration or earlier termination of the lease term of the affected unit or units of Equipment, provided such removal does not reduce the market value of the Equipment below its market value on the date the Equipment became subject to this Lease (as reduced by ordinary wear and tear) and does not impair the utility of the Equipment, and provided further that no Event of Default shall have then occurred and be continuing; any such improvement or addition not removed at or prior to the expiration or earlier termination of the lease term of such unit or units of Equipment shall become accessions to the Equipment, and title thereto shall, upon such expiration or earlier termination, automatically vest in Lessor. Lessee, at Lessor's request, will execute and deliver to Lessor any and all necessary and appropriate documents to effect the intention of the preceding sentence. Lessee hereby waives any right now or hereafter conferred by law to make repairs on the Equipment at the expense of Lessor.

11. Identification Marks. Lessee agrees, at its own cost and expense, to maintain such markings on each unit of Equipment, and to take such other actions, as from time to time may be required by law or otherwise deemed necessary by Lessor in order to protect the title of Lessor to the Equipment, the rights of Lessor under this Lease and the rights of any assignee of Lessor. Lessee shall not allow the name of any person, firm, corporation or entity to be placed upon any unit of Equipment as a designation which might be interpreted as indicating a claim of ownership thereof or a security interest therein by any person, firm, corporation or entity other than Lessor or its assignees.

12. Reports; Inspection. Lessee will:

(a) Furnish to Lessor (i) within 120 days after the close of each fiscal year of Lessee occurring after the date hereof, an audited balance sheet and statement of changes in financial position of Lessee at and as of the end of such fiscal year, together with an audited statement of income of Lessee for such fiscal year; (ii) within 45 days after the close of each of the first three quarters of each fiscal year of Lessee, an unaudited balance sheet and statement of changes in financial position of Lessee at and as of the end of such quarter, together with an unaudited statement of income of Lessee for such quarter; and (iii) from time to time, such other information as Lessor may reasonably request.

(b) Upon the request of Lessor, confirm to Lessor the location of each unit of Equipment and, at any reasonable time, afford Lessor and its agents access to the Equipment for purposes of inspection and observation of its use and make Lessee's records pertaining to the Equipment available to Lessor for inspection and copying.

13. Insurance. Lessee will, at all times prior to the return of the Equipment to Lessor, at its own expense cause to be carried and maintained with insurers of recognized standing (i) property insurance policies insuring against loss or damage to the Equipment at the time subject hereto and (ii) public liability insurance policies insuring against third party personal and property damage, and Lessee will continue to carry such insurance with such deductibles, in such amounts and for such risks as is consistent with prudent industry practice but in any event with no greater deductibles and at least comparable in amounts and against risks customarily insured against by Lessee in respect of equipment owned or leased by it similar in nature to the Equipment, and in no event in amounts less than the amounts set forth under the heading "Insurance" in the Lease Schedules; provided, however, Lessee may self-insure against the risks referred to in (i) or (ii) above, by deductible provisions or otherwise, but only to the extent that Lessee self-insures against such risks with respect to similar property owned or leased by it and to the extent such self-insurance is consistent with prudent industry practice. The proceeds thereof shall be payable to Lessor and Lessee, as their interests may appear. Any policies of insurance carried in accordance with this Section 13 shall (i) require 30 days' prior notice to Lessor of cancellation or material change in coverage and (ii) name Lessor as an additional named insured and shall insure Lessor's interests regardless of any breach or violation by Lessee or any other person (other than Lessor) of any warranties, declarations or conditions contained in, or made in connection with, such policies. On or prior to the date of this Lease, and thereafter not less than five days prior to the expiration dates of the expiring policies required pursuant to this Section 13, Lessee shall deliver to Lessor certificates of insurance issued by the insurers thereunder evidencing the insurance maintained pursuant to this Section 13; provided, however, that if the delivery of a certificate is delayed, Lessee shall deliver an executed binder with respect thereto and shall deliver the formal certificate upon receipt thereof.

All insurance proceeds received by Lessor or Lessee in respect of damage to any unit of Equipment not constituting an Event of Loss (as hereinafter defined) shall be applied directly in payment of repairs in accordance with the provisions of Section 10 hereof, or, if already paid by Lessee and no Event of Default, or other event which with lapse of time or notice or both would become an Event of Default, shall have occurred and be continuing, shall be applied to reimburse Lessee for such payment, upon proof reasonably satisfactory to Lessor that such damage has been fully repaired, and any balance remaining after such repair shall be retained by Lessor.

14. Liens. Lessee will not directly or indirectly create, incur, assume or permit to exist any claim, mortgage, security interest, pledge, lien, charge or other encumbrance ("Liens") on or with respect to the Equipment, Lessor's

title thereto or any interest therein, except (i) the rights of Lessee under this Lease, (ii) Liens created or granted by Lessor or resulting from claims against Lessor not related to the transactions contemplated hereby (Liens described in this clause (ii) being hereinafter called "Lessor's Liens"), (iii) Liens for taxes, assessments or governmental charges or levies, either not due and delinquent or being contested in accordance with Section 15 hereof and (iv) 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, either not delinquent or which shall have been bonded or the enforcement of which shall have been suspended (but only for the duration of such suspension). Lessee, at its own cost and expense, will promptly pay, satisfy, discharge and otherwise take such action as may be necessary to keep the Equipment free and clear of, and duly to discharge, any Lien other than the Liens excepted above.

15. Fees and Taxes. Lessee hereby assumes liability for, and will pay and discharge, when and as due and payable, all license, title, documentation and registration fees and all taxes, levies, imposts, duties, withholdings and governmental charges of any nature (together with any fines, penalties or interest thereon) imposed upon Lessor, Lessee or the Equipment by any federal, state or local government or taxing authority in the United States, or by any taxing authority or governmental subdivision of a foreign country, upon or with respect to the Equipment, or upon the ordering, purchase, ownership, delivery, leasing, possession, use, maintenance, registration, titling, documentation, operation, return or other disposition thereof, or upon the rents, receipts or earnings arising therefrom, or upon or with respect to this Lease, and Lessee shall indemnify, protect, save and hold harmless Lessor from and against, and shall reimburse Lessor for, any and every payment of such fees, taxes, levies, imposts, duties, withholdings and governmental charges, excepting only net income or franchise taxes based upon or measured by Lessor's net income which are imposed or levied by any federal, state or local taxing authority in the United States or by any taxing authority or governmental subdivision of a foreign country; provided that Lessee shall not be required to pay and discharge any such fee, tax, levy, impost, duty, withholding or governmental charge (or any Lien incident thereto) which is not delinquent or which is being contested or protested by Lessee in good faith and by appropriate proceedings diligently conducted, if such proceedings shall stay the collection thereof from or against Lessor, Lessee and the Equipment and, in Lessor's judgment, shall not adversely affect the title, property or rights of Lessor or its assignees in the Equipment or this Lease. Lessee is hereby authorized by Lessor to act for and on behalf of Lessor in any and all of the foregoing respects, including, but not limited to, the above-mentioned contests and protests. Lessee shall timely prepare and file all reports and returns which are required to be made with respect to any obligation of Lessee under, or arising out of, this Section 15. Lessee shall, if requested by Lessor, provide copies of such reports and returns to Lessor promptly after the filing thereof.

Lessor shall furnish Lessee, promptly after receipt, copies of all requests for information from any taxing authority relating to any of the foregoing and shall request such taxing authority to contact Lessee regarding any such information. The provisions of this Section 15 shall survive the expiration or earlier termination of this Lease.

16. Indemnification. Lessee assumes liability for, will pay when due and will indemnify, protect, save, defend and hold Lessor, its agents, employees, officers, directors, successors and assigns harmless from and against, any and all obligations, license or other fees, liabilities, losses, damages, injuries, penalties, claims, demands, actions, suits, costs and expenses, including reasonable attorney's fees and expenses, of every kind and nature whatsoever imposed on, incurred by or asserted against, Lessor, its agents, employees, officers, directors, successors and assigns in any way relating to or arising out of (a) the manufacture, ordering, purchase, acceptance or rejection, ownership, titling or retitling, registration or reregistration, delivery, leasing, possession, use, operation, return or other disposition of the Equipment, including, without limitation, any of such as may arise from patent or latent defects in the Equipment (whether or not discoverable by Lessee or Lessor), any claims based on strict liability in tort, and any claims based on patent, trademark or copyright infringement, or (b) any failure on the part of Lessee to perform or comply with any of the terms of this Lease. Lessee shall give Lessor prompt notice of any occurrence, event or condition known to Lessee as a consequence of which Lessor may be entitled to indemnification hereunder. Lessee shall forthwith upon demand of Lessor reimburse Lessor for amounts expended by Lessor in connection with any of the foregoing or pay such amounts directly. Lessee shall be subrogated to Lessor's rights in any matter with respect to which Lessee has actually reimbursed Lessor for amounts expended by it or has actually paid such amounts directly pursuant to this Section 16. The provisions of this Section 16 shall apply from the date of the execution of this Lease, notwithstanding that the lease term may not yet have commenced with respect to a unit of Equipment, and shall survive the expiration or earlier termination of this Lease.

17. Risk of Loss, Damage or Destruction. (a) Lessee hereby assumes all risk of loss, theft, destruction, damage, seizure, taking or requisition, partial or complete, of or to the Equipment, however caused or occasioned, such risk to be borne by Lessee with respect to each unit of Equipment from the date of its delivery and continuing until such unit of Equipment has been returned to Lessor in accordance with the provisions of Section 20 hereof. Lessee agrees that no occurrence specified in the preceding sentence shall impair, in whole or in part, any obligation of Lessee to Lessor under this Lease, including, without limitation, the obligation to pay Rent.

(b) In the event that any unit of Equipment has become lost, stolen, destroyed or, in the reasonable opinion of Lessee, uneconomical to repair or irreparably damaged or rendered permanently unfit for use from any cause whatsoever, or seized, taken or requisitioned by condemnation or otherwise (which seizure, taking or requisition results in loss of possession by Lessee for a period of 90 consecutive days) (any such event being called herein an "Event of Loss"), Lessee shall, within 15 days of the date of occurrence thereof, give Lessor written notice of such fact, fully informing Lessor of all details with respect thereto, and Lessee shall pay Lessor, on the Rent Payment Date next succeeding the date on which such notice is given, an amount equal to the sum of (i) the Stipulated Loss Value (as hereinafter defined) of such unit as of such Rent Payment Date, plus (ii) all accrued and unpaid Rent payable for such unit through and including such Rent Payment Date. Upon the making of such payment by Lessee, the Rent for such unit of Equipment shall cease to accrue, the lease term of such unit shall terminate and all of Lessor's right, title and interest in such unit shall automatically pass to Lessee on an as-is, where-is basis and without recourse, representation or warranty, express or implied (except that such unit is free and clear of Lessor's Liens). The Stipulated Loss Value of any unit of Equipment as of any Rent Payment Date shall be an amount determined pursuant to Lease Schedule relating to such unit (the "Stipulated Loss Value"). Lessee shall determine, within 15 days after the date of occurrence of damage to a unit of Equipment, whether such unit can be repaired, and if Lessee determines that it can, Lessee will cause such unit to be repaired within 90 days of the date of occurrence of damage. If Lessee determines that such unit of Equipment cannot be repaired, an Event of Loss as to such unit shall be deemed to have occurred on the date of occurrence of damage.

(c) Any insurance proceeds or payments from any governmental entity in respect of any unit of Equipment which has suffered an Event of Loss shall be paid (i) up to an amount equal to the Stipulated Loss Value of such unit to Lessee, provided Lessee shall have paid the Stipulated Loss Value and accrued Rent with respect to such unit and no Event of Default, or other event which with lapse of time or notice or both would become an Event of Default, shall have occurred and be continuing, and (ii) any balance to Lessor.

18. Events of Default. The following events shall constitute "Events of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) Default by Lessee in making any payment due hereunder, and such default shall continue for 10 days after Lessor has provided written notice to Lessee specifying such default and demanding the same to be remedied; or

(b) Default by Lessee in the observance or performance of any of the covenants of Lessee set forth in Sections 13, 20 and 21 hereof; or

(c) Default by Lessee in the observance or performance of any other covenant, condition or agreement to be performed or observed by Lessee under this Lease or any Acquisition Agreement or in any other document or certificate furnished to Lessor in connection herewith or therewith or pursuant hereto or thereto, and such default shall continue for 20 days after Lessor has provided written notice to Lessee specifying such default and demanding the same to be remedied; or

(d) Any representation or warranty made by Lessee in this Lease or any Acquisition Agreement or in any other document or certificate furnished to Lessor in connection herewith or therewith or pursuant hereto, shall prove to be untrue or incorrect in any material respect as of the date of issuance or making thereof; or

(e) Any proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee under this Lease, or any Acquisition Agreement, or any other document or instrument furnished to Lessor in connection herewith or therewith or pursuant hereto or thereto, under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder, under any Acquisition Agreement or under any such other document or instrument), 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 Lessee under this Lease, under any Acquisition Agreement or under any such other document or instrument, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a 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.

19. Remedies Upon Default. Upon the occurrence of any Event of Default and at any time thereafter so long as the same shall be continuing and shall not have been remedied, Lessor may, at its option, declare this Lease to be in default and, at any time thereafter, may exercise one or more of the following remedies, as Lessor in its sole discretion shall elect:

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

(b) Lessor may, by notice in writing, terminate this Lease as to any or all units of Equipment, whereupon all rights of Lessee to the use of such units shall absolutely cease and terminate but Lessee shall remain liable as herein provided; and thereupon Lessee, if so requested by Lessor, shall at the expense of Lessee promptly return such units to the possession of Lessor at such place as Lessor shall designate and in the condition required upon the return thereof at the expiration of this Lease;

(c) Lessor may enter upon the premises where any unit of Equipment is located and take immediate possession of and remove such unit, all without liability on the part of Lessor for or by reason of such entry or taking possession, whether for the restoration of damage to property caused by such taking or otherwise, and without such action constituting a termination of this Lease as to such unit unless Lessor expressly notifies Lessee in writing to that effect;

(d) Lessor may sell any or all units of Equipment at public or private sale, in such commercially reasonable manner as Lessor may determine, or lease to others any or all units of Equipment, as Lessor in its sole discretion may determine, all free and clear of any rights of Lessee and without any duty to account to Lessee with respect to such sale or lease or for any proceeds with respect thereto. Lessee shall be liable for the payment of, and on the date of any such sale or leasing shall promptly pay to Lessor, an amount equal to the sum of (i) any unpaid Rent due on or with respect to any period through the Rent Payment Date next succeeding the date on which any such sale or leasing occurs, plus (ii) as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the deficiency, if any, between the Stipulated Loss Value of such units computed as of the Rent Payment Date next succeeding the date on which such sale or leasing occurs and the net proceeds of such sale or leasing (computed by deducting from the gross proceeds of sale actually received by Lessor, in the case of a sale, or by deducting from the total committed rents payable over the term of the leasing after discounting same to present value at a rate of 9% per annum, in

the case of such leasing, all expenses incurred in connection with the repossession, repair, reconditioning, storing and sale or leasing of such units, including commissions and reasonable attorneys' fees, and any amount for which Lessor would be liable or which would constitute a Lien on the Equipment if not paid), plus (iii) all other amounts then payable to Lessor hereunder;

(e) Upon written notice to Lessee, Lessor shall be entitled to receive immediate payment from Lessee of an amount, as liquidated damages for loss of a bargain and not as a penalty, equal to the Stipulated Loss Value of any or all units of Equipment then subject to this Lease which have not been returned to or repossessed by Lessor, computed as of the Rent Payment Date next succeeding the date on which the Event of Default has occurred, plus any unpaid Rent due on or with respect to such units for any period through such Rent Payment Date, plus all other amounts then payable to Lessor hereunder, and in the event that Lessee shall make all of said payments to Lessor in full, Lessor will transfer to Lessee all of Lessor's right, title and interest, if any, in and to such units, without recourse, representation or warranty, express or implied (except that such units are free and clear of all Lessor's Liens); and

(f) Lessor may avail itself of any other remedy provided by any statute or otherwise available at law, in equity or in bankruptcy.

No remedy referred to in this Section 19 is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available to Lessor at law, in equity or in bankruptcy, and the exercise or beginning of exercise by Lessor of any one or more of such remedies shall not preclude the simultaneous or later exercise by Lessor of any or all such other remedies. No waiver by Lessor of any Event of Default hereunder shall in any way be or be construed to be a waiver of any future or subsequent Event of Default. Lessee shall be liable for all costs and expenses (including reasonable attorneys' fees and disbursements and the costs of any retaking) incurred by reason of the occurrence of any Event of Default and the exercise of Lessor's remedies with respect thereto.

## 20. Return of Equipment.

(a) Upon expiration of the original or any extended term of this Lease with respect to a unit or units of Equipment, Lessee, at its own cost and expense, will forthwith prepare, assemble and deliver possession of such unit or units to Lessor upon such storage tracks of Lessee or any of its affiliates as Lessor may designate (or, in the absence of such designation, as Lessee may select) and permit or arrange for Lessor to store such unit or units on such tracks for a period not exceeding 90 days from the date possession

is delivered to Lessor as hereinabove provided and transport the same, at any time within such 90-day period, to any reasonable place on the lines of railroad owned or operated by Lessee or any of its affiliates or to any carrier for shipment, all as directed by Lessor; the movement and storage of such unit or units to be at the expense and risk of Lessee.

(b) In the event that Lessor shall request that any or all units of Equipment be returned upon termination of this Lease as provided in Section 19 hereof, Lessee shall forthwith deliver possession of such units to Lessor. For the purpose of delivering possession of any unit or units of Equipment as above required, Lessee shall, at its own risk and expense, forthwith prepare, assemble and place such units on such storage tracks of Lessee or any of its affiliates as shall be designated by Lessor, permit or arrange for Lessor to store such units on any lines of railroad owned or operated by Lessee or any of its affiliates or other premises approved by Lessor until such units have been sold, leased or otherwise disposed of by Lessor and/or transport such units to any place on the lines of railroad owned or operated by Lessee or any of its affiliates or to any carrier for shipment, all as directed by Lessor.

(c) All units of Equipment returned to Lessor under this Lease shall be in the condition in which such units are required to be maintained pursuant to Section 10 hereof and shall be free and clear of all Liens other than Lessor's Liens; Lessee shall pay for any necessary repairs to place such units in such condition and will pay and discharge all such Liens. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Lessor shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Equipment. During any storage period, Lessee will, at its own cost and expense, maintain and keep the equipment in good order and repair and will permit Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any unit of the Equipment, to inspect the same. All amounts earned in respect of units of Equipment after the date of termination of this Lease with respect to such units shall belong to Lessor and, if received by Lessee, shall be promptly turned over to Lessor. In the event any unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, Lessee shall, in addition, pay to Lessor for each day thereafter an amount equal to the Daily Lease Rate Factor multiplied by the Lessor's Cost of such unit.

21. Sublease, Assignment, Merger, etc.

(a) Lessee will not, without the prior written consent of Lessor, sublease or otherwise relinquish possession of any unit of Equipment or, except as provided in subsection (b) below, assign any of its rights hereunder, and any such attempted sublease, relinquishment or assignment by Lessee shall be null and void. Any such sublease, relinquishment of possession of the Equipment or assignment to which Lessor has consented shall provide (expressly or in another appropriate manner) that it is subject to the terms and conditions of this Lease, including without limitation the rights and remedies of Lessor under this Lease in respect of the Equipment covered thereby upon the occurrence of an Event of Default hereunder. In no event, however, shall Lessee be relieved from any of its obligations to Lessor hereunder.

(b) Nothing in this Lease shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Equipment to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia, which shall have duly assumed the obligations of Lessee hereunder into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of Lessee as an entirety or substantially as an entirety, provided that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and provided further that the net worth of such assignee or transferee shall be equal to or greater than the net worth of Lessee at the time of such transaction.

(c) Lessor may at any time, with or without notice to Lessee, transfer, sell, mortgage, grant a security interest in or assign this Lease or any item of the Equipment or any Rent or other sums due or to become due hereunder, and in such event Lessor's transferee, purchaser, mortgagee or assignee shall have all of Lessor's rights, powers, privileges and remedies hereunder and shall not be obligated to perform any duty, covenant or condition required to be observed or performed by Lessor, subject only to the rights of Lessee under this Lease. In the event of any such assignment of this Lease, Lessee shall, upon receipt of written notice thereof, accept and comply with the directions and demands of Lessor's assignee and shall not assert against such assignee any defense, counterclaim or set-off that Lessee may have against Lessor.

22. Lessor's Right to Perform for Lessee. If Lessee fails to duly and promptly pay, perform or comply with any of its obligations, covenants and agreements under this Lease (except for the payment of Basic Rent), Lessor may itself pay, perform or comply with any of such obligations

for the account of Lessee, without thereby waiving any Event of Default, and any amount paid or expense incurred by Lessor in connection therewith (including reasonable attorneys' fees) shall, together with interest at the Late Payment Rate, be payable to Lessor on demand.

23. Notices. Any notice required or permitted to be given under this Lease shall be in writing and shall be deemed to have been given when deposited in the United States mail with proper postage for first-class mail pre-paid, addressed in the manner provided in the most recent Acquisition Agreement, or at such other address as Lessor or Lessee, as the case may be, shall from time to time designate in writing to the other party.

24. Miscellaneous. Lessee will, upon Lessor's demand, at Lessee's sole cost and expense, execute, acknowledge, deliver, file, register and record any and all further instruments reasonably requested by Lessor, or Lessor's assignee, from time to time, including, without limitation, financing statements under the Uniform Commercial Code, for the purpose of carrying out the intent of this Lease and protecting Lessor's rights, title and interest (and the rights of Lessor's assignee, if any) hereunder and in and to the Equipment. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without 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. To the extent permitted by applicable law, the parties hereto hereby waive any provision of law which renders any provision of this Lease prohibited or unenforceable in any respect. No term or provision of this Lease may be amended, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by a duly authorized officer of the party against which the enforcement of the amendment, alteration, waiver, discharge or termination is sought. A waiver on any one occasion shall not be construed as a waiver on a future occasion. This Lease shall in all respects be governed by, and construed in accordance with, the laws of the State of California. All of the covenants, conditions and obligations contained in this Lease shall be binding upon and shall inure to the benefit of the respective successors and assigns of Lessor and (subject to the restrictions of Section 21 hereof) Lessee. This Lease (including all Lease Schedules), the Acquisition Agreements and the other instruments referred to herein and therein constitute the entire agreement of Lessor and Lessee with respect to the leasing of the Equipment and cancel and supersede any and all prior oral or written understandings with respect thereto.

This Lease may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute but one and the same instrument. The headings

of the Sections of this Lease have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be duly executed by their duly authorized representatives as of the date first written above.

CALIFORNIA FIRST BANK,

as Lessor

BY Leroy B. Oriskany

BURLINGTON NORTHERN INC.,

as Lessee

BY R C Burton

Annex A  
to Lease

EQUIPMENT

| <u>Manufacturer</u>                              | <u>Quantity</u> | <u>Description</u>                       |
|--|-----------------|--|
| Nordberg<br>(Rexnord Inc.)<br>Milwaukee, WI      | 2               | Model "RT" Dun-Rite<br>Gaging Machine    |
| Galion   | 4               | Model 150F<br>Mobile Crane               |
| Canron<br>Columbia, SC                           | 5               | Electromatic<br>Tampers (Mark 1)         |
| Little Giant<br>DesMoines, IA                    | 4               | Model #32, 15-Ton<br>Track Crane         |
| Pettibone<br>Chicago, IL                         | 2               | Model 441-B<br>Speed Swing               |
| Canron<br>Columbia, SC                           | 2               | Switch Tamper                            |
| Kershaw  | 3               | Ballast<br>Regulator                     |
| Canron<br>Columbia, SC                           | 2               | Trac Gopher Switch<br>Undercutter Tamper |
| Kershaw  | 1               | Brush Cutter                             |
| Transport<br>Trailer Co.,<br>Cedar Rapids,<br>IA | 3               | Low Boy Trailer                          |



