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CONDITIONAL SALE AGREEMENT #1 INTERSTATE COMMERCE COMMISSION

between

THE FIRST NATIONAL BANK OF DENVER

and

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

Dated as of March 1, 1973

CONDITIONAL SALE AGREEMENT #1

THIS AGREEMENT, dated as of the 1st day of March, 1973, by and between THE FIRST NATIONAL BANK OF DENVER, a national banking association organized under the laws of the United States of America (hereinafter sometimes called the "Seller"), party of the first part, and THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware (hereinafter sometimes called the "Buyer"), party of the second part.

WITNESSETH:

In consideration of the mutual promises of the parties hereto hereinafter set forth, the parties hereto agree as follows:

1. Sale and Delivery of Equipment.

The Seller, on or after March 1, 1973, is to acquire from various manufacturers as hereinafter provided, such units of new standard gauge freight cars of the type customarily acquired by railroad companies as the Buyer may select (hereinafter sometimes called "Equipment") and which does not exceed an aggregate actual cost of \$4,235,000, and, upon the acquisition thereof, agrees to sell and deliver to the Buyer, and the Buyer hereby agrees to buy same from the Seller at actual cost, and to accept delivery thereof at the times and places hereinafter specified. The words "Actual Cost" as used in this Agreement shall mean the full purchase price of the Equipment as set forth in the manufacturer's invoice covering such Equipment. To date, the Buyer has selected the following units of such Equipment which the Seller hereby agrees to sell and the Buyer agrees to buy, to-wit:

(a) One hundred (100) new, 100-ton lined covered hopper cars, at an actual cost of approximately \$19,030.00 per unit, total cost \$1,893,375.00, ACF Industries, Inc., Builder;

(b) Seventy-five (75) new, 100-ton open-top hopper cars, at an actual cost of approximately \$19,550.00 per unit, total cost \$1,466,250.00, Greenville Steel Car Co., Builder;

(c) Forty (40) new, 100-ton, 52'6" flat bottom gondola cars, equipped with coil racks, at an actual cost of approximately \$16,100.00 per unit, total cost \$644,000.00, Thrall Car Manufacturing Co., Builder.

2. Delivery and Acceptance.

Buyer shall make all the arrangements with the manufacturers as to time for and place of delivery of the Equipment. Delivery of the Equipment by the manufacturer to the Seller shall, for the purposes of this Agreement, constitute delivery of the Equipment by the Seller to the Buyer. All freight charges for the transportation of the Equipment from the manufacturer thereof to the Seller shall be assumed and paid for by the Buyer and the payment thereof shall be secured by this Agreement.

Upon delivery of the Equipment or any portion thereof, by the manufacturer to the Seller, the Buyer shall forthwith inspect such Equipment and if such Equipment meets with the specifications previously agreed upon by the Buyer and manufacturer and a bill of sale covering such Equipment has been delivered by the manufacturer to the Seller, the Buyer will accept such Equipment on behalf both of the Seller and the Buyer and evidence its acceptance by a certificate of acceptance, executed by an authorized representative of the Buyer, stating that the Equipment has been accepted by him on behalf of the Seller and the Buyer as conforming in all respects to the requirements and provisions of this Agreement and has been duly delivered hereunder and that such Equipment is marked in accordance with the requirements of Section 4 hereof. Such Certificates of Acceptance shall constitute conclusive evidence that the Equipment has been duly delivered by the manufacturer to the Seller and by the Seller to the Buyer and is acceptable to the Buyer in all details. Upon delivery of the Equipment by the manufacturer to the Seller, the Buyer will assume the responsibility and risk of loss with respect thereto.

3. Amount and Terms of Payment of Purchase Price.

The Buyer shall pay to the Seller the Actual Cost of each unit of Equipment as hereinafter provided. The Actual Cost of the Equip-

ment purchased under this Agreement is herein referred to as the purchase price. The aggregate purchase price of all the Equipment purchased hereunder shall not exceed \$4,235,000.

Twenty-five per cent (25%) of the purchase price shall be paid in cash by the Buyer to the Seller as a down payment upon delivery to and acceptance by the Buyer of any Group of Equipment and the balance of the purchase price, representing at least seventy-five percent (75%) thereof, shall be paid by the Buyer to the Seller in twenty (20) equal consecutive semi-annual installments, beginning September 1, 1973, and on each March 1 and September 1 of each year thereafter, to and including March 1, 1983, together with interest at the rate per annum, calculated on a 360-day basis, as follows, based on The First National Bank of Denver prime rate:

March 1, 1973 through February 28, 1974 -- current prime rate; March 1, 1974 through February 29, 1976 -- current prime rate plus $\frac{1}{4}$ of 1%; March 1, 1976 through February 28, 1983 -- current prime rate plus $\frac{1}{2}$ of 1%; on the balance of the purchase price of the equipment remaining unpaid from time to time to the maturity dates of the respective installments of principal.

Interest shall be paid on the first day of March and September of each year commencing September 1, 1973. All overdue installments of the purchase price shall bear interest at the rate of 10% per annum. The purchase price and interest thereon shall be payable by the Buyer to the Seller at its office in Denver, Colorado. The Seller will notify Buyer immediately whenever its prime rate changes. Buyer will have the privilege of prepayment of the loan in multiples of \$10,000 at any time without penalty.

Neither the Buyer nor the Seller shall be obligated hereunder for any Equipment not delivered and accepted as herein provided. Any Equipment not so delivered and accepted shall be excluded from this Conditional Sale Agreement and shall not be included in the term "Equipment" as used herein.

The Seller agrees with the Buyer that the Seller will, upon delivery by the manufacturer to the Seller on or after March 1, 1973, of a Group of Equipment and the acceptance by the Buyer of

such Equipment so delivered, pay the purchase price of such Equipment to the manufacturer thereof, provided the Seller shall first have received all of the following:

(a) A Bill of Sale, in form and substance satisfactory to the Seller from the manufacturer to the Seller, transferring to the Seller title to the Equipment so delivered, and warranting to the Seller that, at the time of delivery to the Seller, the manufacturer had legal title to all such Equipment and lawful right to sell the same, and that the title to all such Equipment transferred to the Seller by the Bill of Sale, was at the time of delivery of such Equipment to the Seller, free from all claims, liens and encumbrances of any nature;

(b) A Certificate of Acceptance, signed by an authorized representative of the Buyer, containing the statements required by the provisions of the second paragraph of Section 2 hereof;

(c) A duplicate of the manufacturer's invoice, covering all such Equipment so accepted, stating the full purchase price thereof;

(d) An opinion of counsel for the Buyer, stating the following which the Buyer represents and warrants to be true:

(i) that this Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms;

(ii) that this Agreement has been duly filed and recorded with the Interstate Commerce Commission and that no other filing or recordation is necessary for the protection of the rights of the Seller in any State of the United States;

(iii) that title to the units of the Equipment is validly vested in the Seller, free of all claims, liens and encumbrances, except only the rights of the Buyer under this Agreement;

(iv) that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of this Agreement.

(e) Payment by the Buyer of the down payment, pursuant to the requirement of this Section 3, plus any freight charges and any other charges to be paid by the Buyer hereunder.

If the price of any Equipment is adjusted, after the Seller has made payment therefor, and such adjustment results in an increase in the purchase price, Buyer agrees to pay the amount of any such increase directly to the manufacturer forthwith.

4. Title to the Equipment.

The Seller shall, and hereby does, retain the full legal title to, and property in, any and all of said Equipment until the Buyer shall have made all of the payments and shall have kept and performed all of the covenants in this Agreement provided to be made, kept and performed by the Buyer, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Buyer as herein provided.

The Buyer covenants and agrees that it will cause each unit of the Equipment to be kept numbered with the proper road numbers, and to be kept plainly marked, by stenciled letters not less than one inch in height on each side of such unit, or on metal plates affixed to both sides of each such unit, with the name of the Seller, or of the Seller's assignee or assignees, as the case may be, followed by the word "Owner", or other appropriate words designated by the Seller.

In the event that the Equipment, or any of it, shall be lost or destroyed from any cause whatsoever during the continuance of this Agreement, the Buyer will promptly replace, at its own cost, any of the Equipment so lost or destroyed, by new standard gauge railroad rolling stock of equal value; provided, however, the Buyer may defer such replacement of lost or destroyed Equipment during any period during which the fair value of the unreplaced lost or destroyed Equipment does not exceed the greater of: (i) \$50,000 or (ii) 2% of the principal amount of the total purchase price outstanding at the time such determination is required to be made.

For the purpose of this Section 4, the fair value of such new rolling stock shall mean the cost thereof, and the fair value of such lost or destroyed Equipment shall be a sum equal to the unpaid balance of the purchase price due on such Equipment. The title of all new rolling stock procured for such replacement shall be taken in the name of the Seller, free from liens, and such new rolling stock shall be marked in accordance with the provisions of this Section 4. At the time of every such replacement, the Buyer shall deliver to the Seller a Certificate of Cost stating the fair value of the lost and destroyed Equipment, and the fair value of the new rolling stock with which it is replaced, together with a Bill or Bills of Sale, and Opinion of Counsel satisfactory to the Seller (who may be Counsel to the Buyer) and a certificate as to delivery, in a like manner as provided in Section 2.

Thereupon, such new rolling stock shall be deemed part of the Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Equipment; and the Seller and the Buyer shall execute a Supplemental Agreement therefor, describing the same, upon and subject to all the terms and conditions hereof, which shall be filed or recorded by the Buyer in the same manner as this Agreement.

The Buyer shall have the right at its option, in lieu of replacing lost or destroyed Equipment with new rolling stock, to satisfy all or any part of such obligation by the deposit of cash with the Seller until such lost or destroyed Equipment shall be replaced as provided herein. Each such deposit of cash shall be accompanied by a Certificate of Cost describing the lost or destroyed Equipment covered by the deposit; stating the fair value thereof; and stating that the Buyer is delivering such cash to the Seller in total satisfaction (or if partial satisfaction, the portion thereof) of the Buyer's obligation to replace the lost and destroyed Equipment described in such certificate. At the time the lost and destroyed Equipment covered by cash deposit is replaced by the Buyer with new rolling stock, the amount of such deposit shall be paid to the Buyer. Any cash at any time held by the Seller, shall, until paid out by the Seller, whether unpaid purchase price for new rolling stock or deposits for lost and destroyed Equipment, be deposited to the credit of the Seller. The Seller will, upon written request of the Buyer, place any moneys so held in Time Deposits of specified duration, and, to the extent permitted by law, allow interest on any such Time

Deposits at such a rate as may be agreed upon, or place such moneys so held in trust in bonds, notes, or other direct obligations of the United States of America or Agencies thereof, of such maturity, at such prices including any principal or accrued interest, as shall be set forth in a request by the Buyer, such Government securities to be held by the Seller. The Seller shall on request of the Buyer, or the Seller may, in the event cash, or any part thereof, is requested to be paid or disbursed under the terms of this Agreement, sell such Government or Agency securities, or any portion thereof, and restore to cash the proceeds of any such sale. The Seller will pay to the Buyer any proceeds over and above the cost of such Time Deposits or Government or Agency securities after deduction of an amount equal to any expenses incurred or sustained in connection with any purchase or sale thereof.

Upon the written request of the Buyer, stating that the use of any of the Equipment is no longer required by the Buyer, evidenced by a resolution of its Board of Directors, the Seller may, while the Buyer is not in default hereunder, execute and deliver a bill of sale assigning and transferring to the purchaser named by the Buyer the absolute title to any of the Equipment; provided, however, that none of the Equipment shall be so assigned or transferred unless simultaneously the Seller shall receive from said purchaser the agreed purchase price thereof and from the Buyer a sum in cash equal to the amount, if any, by which said purchase price is less than the then fair value of the Equipment so sold. The sums so paid to the Seller shall be held by it until paid out by the Seller upon the written request of the Buyer, for the purchase by the Seller of new standard gauge railroad rolling stock, free from all liens and encumbrances, and upon the delivery of such new equipment to the Seller, accompanied by a certificate or certificates of delivery of such Equipment, a bill or bills of sale, an opinion of counsel and a certificate of cost in like manner as is provided in Section 4 of this Agreement. The Buyer will pay any additional moneys necessary to be paid to the manufacturers of such new railroad rolling stock, if the cost thereof exceeds sums then in the hands of the Seller to be applied on account thereof. Any equipment so acquired and substituted shall be marked in accordance with the provisions of Section 4 hereof and immediately upon being so marked shall be part of the Equipment, subject to all the terms and conditions hereof and of the Agreement in all respects as though it had been part of the original Equipment herein described, and the Buyer and the Seller shall execute, and the Buyer shall file or record, as required by law, a supplemental agreement thereof,

describing the same, upon and subject to all the terms and conditions hereof. The term "Equipment", wherever used herein, unless otherwise indicated by the context, is intended to include any new equipment so acquired or otherwise subjected to this Agreement or required or intended so to be.

No part, fixture, or device attached to any unit of the Equipment, the cost of which is included in the cost of such unit to the Seller, shall be removed by the Buyer without the prior approval of the Seller nor unless such removal shall be without damage to such unit and such unit shall, notwithstanding such removal, be and remain available for service as standard-gauge railroad rolling stock. Such approval shall not be given unless the Buyer shall not be in default hereunder and shall file with the Seller a certificate, executed by a Vice-President, Comptroller, Assistant Comptroller, or the Chief Mechanical Officer of the Buyer, showing that such part, fixture or device is no longer required by the Buyer and that its removal will not impair the efficiency and usefulness of such unit in the service of transportation, and unless the Buyer shall pay or cause to be paid to the Seller a sum of money equal to the fair value of such part, fixture or device. The Seller shall execute and deliver a bill of sale assigning and transferring to the purchaser named by the Buyer the absolute title to such part, fixture or device, and shall hold the sums of money so paid to it until paid out by the Seller upon the written request of the Buyer for the purchase by the Seller of new standard-gauge railroad rolling stock, or similar parts, fixtures or devices, free from all liens and encumbrances, in the manner and upon the terms, conditions and stipulations set forth in the foregoing paragraphs. The Seller shall incur no liability or responsibility in consequence of its approval of the removal of any such part, fixture or device while the Buyer is not in default hereunder, upon receipt of the certificate and the payment hereinbefore required to be furnished to it by the Buyer.

For the purpose of this Section 4 the fair value of the Equipment shall be the greater of (i) a sum equal to the unpaid balance of the purchase price due on such Equipment, or (ii) the reasonable market value thereof at the time, all as certified to the Seller by a Vice-President, the Comptroller, an Assistant Comptroller, or the Chief Mechanical Officer of the Buyer, (hereinafter called Certificate of Cost).

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the Equipment

or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; provided, that the Equipment may be lettered "The Denver and Rio Grande Western Railroad Company", "D. & R.G.W.", or "Rio Grande", or in some other appropriate manner for the convenience of identification of the Buyer's interest therein.

When, and only when, the Buyer has paid the full purchase price for the Equipment, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by it, title to and property in all of the Equipment shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, upon request of the Buyer, execute and deliver to the Buyer a bill or bills of sale of all of said Equipment, transferring the title to and property in said Equipment to the Buyer free and clear of all liens and encumbrances created or retained hereby and shall execute for record or for filing in the public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records, the title of the Buyer to all of said Equipment; provided, however, that if the Seller shall have assigned its interest in and to said Equipment and its rights hereunder pursuant to Section 11 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said Equipment to the Buyer and warranting the same but only against the acts and deeds of such assignee.

5. Taxes.

All payments to be made by the Buyer hereunder shall be free of expenses to the Seller for collection or other charges, and of the amount of any State or Federal taxes (other than State and Federal Income Taxes) hereafter levied or imposed directly upon this Agreement and/or any sale, payment shipment or delivery under the terms hereof, all of which expenses and taxes the Buyer assumes and agrees to pay in addition to the above mentioned purchase price of said Equipment. The Buyer shall also pay promptly all taxes and assessments which may be imposed upon the Equipment or the earnings arising therefrom or the operation thereof, or upon the Seller by reason of its ownership or sale thereof by any jurisdiction in which the Equipment is operated by the Buyer, and agrees to keep at all times all and every part of the Equipment free and clear of all taxes, assessments, liens and encumbrances.

6. Compliance with Laws, Rules and Regulations.

The Buyer covenants that the Equipment will at all times be maintained, used and operated under and in compliance with all laws and regulations in any jurisdiction to which the Equipment may be subject. The Buyer further covenants that it will comply in all respects with all acts of Congress and with the laws of the United States and of the various States and of the Dominion of Canada, and the provinces thereof, into which its operation involving the Equipment may extend during the term of this Agreement, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over any of the Equipment, and in the event that said laws or rules require the alteration of any of the Equipment, the Buyer agrees to conform therewith, at its expense, and to maintain the same in proper condition for operation under such laws and rules during the life of this Agreement; provided, however, that the Buyer may in good faith contest, in any reasonable manner, the application of any such law or rule which does not, in the judgment of the Seller, affect or threaten the Seller's title in and to the Equipment.

7. Maintenance.

The Buyer further agrees to maintain and keep said Equipment in good order and repair at all times at its expense, and shall bear the risk, and shall not be released from its obligations hereunder, in case of any and all damage, loss or destruction of said Equipment from whatsoever cause arising.

8. Reports and Inspection.

The Buyer hereby agrees to furnish to the Seller, if requested, once in every year as long as this Agreement shall be in force, an accurate inventory of the Equipment in actual service, and the numbers and the description of such Equipment as may have been destroyed and replaced by other. In addition thereto, the Buyer agrees to furnish to the Seller, if requested, once in every year as long as this Agreement shall remain in force, a report of inspection by a competent disinterested party, satisfactory to the Seller, certifying that said Equipment has been maintained, is in good order and repair, and is properly stenciled or plated pursuant to Section 4 hereof.

The Buyer shall promptly and fully inform the Seller of any loss or destruction of any of the Equipment and of any substantial repairs made or being made upon it or any of it. If required by the Seller, the Buyer shall furnish to the Seller, a report of a competent disinterested party, satisfactory to the Seller, covering the nature and extent of any damage to the Equipment, and as to the satisfactory repair thereof.

The Seller shall have the right, but shall be under no obligation, to inspect the Equipment at any reasonable time or times during the continuance of this Agreement. The Buyer agrees, insofar as it may legally do so, to supply free transportation over its lines to designated agents of the Seller for the purpose of enabling such agents to reach the point or points where the Equipment is in operation, for the purpose of making such inspection or of assisting and instructing the employes of the Buyer in the proper operation and maintenance of said Equipment.

9. Prohibition Against Liens.

The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through or under the Buyer, its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Equipment or any of it, superior to the title of the Seller therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the Equipment.

10. Indemnities and Warranties.

The Buyer hereby agrees to save, indemnify and keep harmless the Seller from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Equipment or the use or operation thereof. Said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyances of the Equipment, as provided in Section 4 hereof. The Buyer will bear the risk, and shall not be released from its obligations hereunder in the event of any defect in or damage to, or destruction or loss of, any or all of the Equipment.

The Buyer, having selected the type of Equipment, the accessories thereto, and the manufacturers thereof, does hereby agree to save, indemnify and keep harmless the Seller from and against any and all royalties, damages, claims, suits, judgments and costs that may arise from the use of any patented article on the Equipment at any time.

Seller is not to be held liable for any representations or any warranties including any warranty of title or quality, expressed or implied, and acceptance by the Buyer of delivery of any of the Equipment or any replacement thereof under the terms of this Agreement shall operate ipso facto as a conclusive acknowledgment on the part of the Buyer or between it and Seller that it is satisfied with the quality of said Equipment thus delivered to it and with Seller's title thereto; provided, that Seller shall, at the request of the Buyer, execute and deliver to the Buyer assignment of any claims which said Seller may at any time have against any one or more of the manufacturers by reason of any such defect in the Equipment or any parts thereof.

II. Assignments by the Seller.

All or any of the rights of Seller under this Agreement, including the right to receive the payments herein provided to be made by Buyer, may be assigned by Seller and reassigned by any assignee at any time and from time to time.

Upon any such assignment the assignor shall give written notice to Buyer, together with a counterpart or certified copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Seller's right, title and interest in and to the Equipment and each and every part thereof. From and after the receipt by Buyer of the notification of any such assignment, all payments thereafter to be made by Buyer hereunder, shall, to the extent so assigned, be made to the assignee.

The rights of Seller or the right of any assignee of Seller, or any assignee of any assignee to the entire unpaid purchase price, or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder or such part or all thereof as may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of

any obligation of any of the manufacturers, or the successor or successors to the manufacturing properties and business of any of the manufacturers, in respect of the Equipment or the manufacture, delivery, guaranty or warranty thereof, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Buyer by any of the manufacturers, or the successor or successors to the manufacturing properties and business of any of the manufacturers.

In the event of any such sale, transfer or assignment, or successive sales, transferees or assignments by the Seller, of title to any of the Equipment and of the Seller's rights hereunder in respect thereof, the Buyer shall, whenever requested by such vendee, transferee or assignee, change the name plates or restencil the name on both sides of each unit and section of the Equipment so as to indicate the title of such vendee, transferee or assignee to such Equipment and its succession to the rights of the Seller hereunder, such stencil or plates to bear such word or legend as shall be specified by said vendee, transferee or assignee. The cost of obtaining and attaching plates or restenciling in connection with any assignments shall be borne by such vendee, transferee or assignee.

The term "Seller" whenever used in this Agreement means The First National Bank of Denver, before any assignment of all or any rights of the Seller hereunder as hereinbefore provided in this Section 11, and after any such assignment means the assignee or assignees for the time being of all of the Seller's rights hereunder.

12. Successors to and Assignments by the Buyer.

The Buyer agrees that it will not sell, assign, transfer, or otherwise dispose of, its rights under this Agreement, and will not transfer possession of said Equipment to any other person, firm or corporation, without first obtaining the written consent of the Seller to such sale, assignment, transfer or other disposition.

The Buyer agrees that it will not pledge, hypothecate, or in any manner encumber, or permit the encumbrance of, said Equipment or any part thereof.

13. Defaults and Acceleration.

In the event that any one or more of the following events of default shall occur, to-wit:

a. The Buyer shall fail to pay in full when due any installment of purchase price or of interest thereon at the time and in the manner hereinbefore contracted to be paid as provided in Section 3 hereof; or

b. The Buyer shall fail or refuse to comply with any covenant, agreement, term or provisions of this Agreement on its part to be kept and performed; or

c. Any of the representations, guaranties or warranties of the Buyer prove to be untrue; or

d. A permanent receiver or receivers or a permanent trustee or trustees in bankruptcy, for the Buyer or its property, shall be appointed and (a) the Seller shall have demanded of the Buyer in writing that action be taken in respect thereof, and (b) within thirty (30) days after such demand, such receiver or receivers or trustee or trustees shall not have been discharged;

then, at any time after the occurrence of such an event of default, the Seller may, without further notice or demand except to the extent necessary in order to comply with any legal requirement then in force and applicable to such action by the Seller, declare the entire unpaid balance of said purchase price, together with the unpaid interest thereon, whether the same shall then have fallen due or not, immediately due and payable, without further demand, and thereafter the entire sum shall carry interest at the rate of six per cent (6%) per annum upon any portion thereof then overdue, from the date of such default.

The Seller may at its election (and, if before sale or before full performance of this Agreement all costs and expenses of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this section as aforesaid, shall have been paid by the Buyer, and all other existing defaults shall have been remedied, or provision therefor satisfactory to the Seller shall have been made, then and in every such case the Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they

would have been if no such cured default had existed and no such declaration or termination had been made; but no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, or impair any rights or remedies consequent thereon.

14. Remedies.

If the Buyer shall make default as hereinabove provided, then at any time thereafter during the continuance of such default the Seller may, without further notice or demand except to the extent necessary in order to comply with any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any of it, and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Buyer any sums theretofore paid, and free from all claims whatsoever except as hereinafter in this Section 14 expressly provided, and may remove the same from the use and possession of the Buyer and for such purpose may enter upon the Buyer's premises where the Equipment may be located, and may use and employ in connection with such removal, at the expense of the Buyer, any supplies, services and aids, and any available trackage and other facilities or means of the Buyer, without process of law; and the Buyer shall deliver the Equipment, or any of it, with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Seller may reasonably designate and for such purpose move or draw the Equipment in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Seller shall have the right to store the same upon the premises of the Buyer without charge until the Seller shall desire to remove the same therefrom. And it is hereby expressly agreed by the Buyer that performance of this Agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Buyer requiring specific performance hereof.

If the Buyer shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Seller with or without retaking possession thereof may sell the Equipment, or any of it, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Buyer, or of any other party.

claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, all subject to and in compliance with any legal requirement then in force and applicable to such sale. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at Denver, Colorado, at such time or times as the Seller may fix (unless the Seller shall, as so permitted, specify a different place or places, in which case the sale or sales shall be held at such place or places and at such time or times as the Seller may specify), in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine in compliance with any such legal requirements, provided that the Buyer shall be given written notice of such sale at least ten (10) days prior thereto, by telegram or registered mail addressed to the Buyer at Denver, Colorado, or such other notice, if any, as may be necessary to comply with any such legal requirements. If such sale shall be a private sale permitted by such legal requirements it shall be subject to the right of the Buyer to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Seller may itself bid for and become the purchaser of the Equipment or any of it so offered for sale without accountability to the Buyer (except to the extent of surplus money received as hereinafter provided in the last paragraph of this Section 14), and in payment of such purchase price the Seller shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Seller by the Buyer hereunder.

In addition, if the Buyer shall make default as hereinabove provided, then at any time thereafter during the continuance of such default, and after declaring the actual purchase price immediately due and payable as hereinabove provided, the Seller, in addition to all other remedies and not in any manner by way of limitation, may offset against the indebtedness of the Buyer, any deposits or credits received under or created pursuant to the provisions of Section 4 of this Agreement.

Each and every power or remedy hereby specifically given to the Seller shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be

cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or any acquiescence therein.

If the Seller shall exercise any of the powers or remedies conferred upon it hereunder, the Buyer shall have the right, after all sums due hereunder to the Seller shall have been received by it in full, including its proper costs and expenses incident to the collection thereof, to require title to the Equipment, if not previously sold or otherwise disposed of by the Seller pursuant to the provisions hereof, to be transferred and assigned by the Seller to the Buyer free from any further liabilities or obligations to the Seller. If, after payment of all proper costs and expenses of the Seller, incurred in the enforcement of its remedies hereunder and after applying all remaining sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Buyer shall pay the amount of such deficit to the Seller on demand. If, after payment of said costs and expenses and after applying as aforesaid all remaining sums realized by the Seller there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Buyer.

15. Applicable State Laws.

Any provision of this Agreement prohibited by any applicable laws of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however the conflicting provisions of any applicable State law may be waived they are hereby waived by the Buyer to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

16. Extension Not a Waiver.

Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor any of its rights and remedies hereunder or otherwise existing.

17. Recording.

The Buyer shall cause this Agreement to be filed, registered and recorded wherever required for the proper protection, to the satisfaction of counsel for the Seller, of the Seller's title to the Equipment and any replacement or replacements, and its rights under this Agreement; and the Buyer shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file, register and record any and all further instruments, required by law or reasonably requested by the Seller for the purpose of such protection of its title and rights, or for the purpose of carrying out the intention of this Agreement.

18. Payment of Expenses.

The Buyer shall pay all costs, charges and expenses, except the counsel fees of Seller, incident to the preparation, execution, acknowledgment, filing, registering and recording of this Agreement and of any instrument supplemental hereto or amendatory hereof, excepting only assignments or instruments of transfer by the Seller or an assignee of Seller.

19. Execution of Counterparts.

This Agreement may be simultaneously executed in two or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

20. Section Headings.

All section, paragraph or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21. Modification of Agreement.

This agreement of conditional sale constitutes the entire agreement between the Buyer and the Seller with respect to the sale of the Equipment herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by duly authorized officers of the Buyer and the Seller.

22. Possession and Use of the Equipment by the Buyer.

So long as the Buyer shall not be in default under this Agreement, the Buyer shall be entitled to the possession of the Equipment and to the use thereof from and after the delivery of the Equipment by the Seller to the Buyer, but only upon and subject to all terms and conditions of this Agreement.

23. Law Governing.

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Colorado.

IN WITNESS WHEREOF, The First National Bank of Denver, and The Denver and Rio Grande Western Railroad Company have caused this Agreement to be executed by their respective officers, thereunto duly authorized, and their respective

corporate seals to be affixed hereto and duly attested, all as of the day and year first above written.

THE FIRST NATIONAL BANK OF DENVER

Attest:

Robert J. McRee

Its Assistant Vice President

John C. Root
Vice President

Signed, sealed and delivered by
The First National Bank of Denver
in the presence of:

Ludy Sutliff

Betty L. Ponder
Attesting Witnesses

THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY

Attest:

McMasterson
Secretary

W. J. Holliman
Executive Vice President and
General Manager

Signed, sealed and delivered by
The Denver and Rio Grande
Western Railroad Company in
the presence of:

C. E. Hightower

Shirley A. Durnley
Attesting Witnesses