

FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION

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Fee \$ 50.00

INTERSTATE COMMERCE COMMISSION

A SUBSIDIARY OF

FIRST OKLAHOMA BANCORPORATION, INC.

ICC Washington, D. C.

November 6, 1979

Interstate Commerce Commission  
Washington, D.C.

Gentlemen:

Enclosed for recordation under the provisions of 49 USC 11303 (formerly Section 20(c) of the Interstate Commerce Act), as amended, are the original and seven counterparts of an Equipment Lease dated as of November 1, 1979.

A general description of the railroad rolling stock covered by the enclosed documents is set forth in Schedule A attached to this letter and made a part hereof.

The names and addresses of the parties are:

Lessor under Equip- ment Lease:	First Oklahoma Financial Corporation 120 N. Robinson Oklahoma City, Oklahoma 73125
Lessee under Equip- ment Lease:	Burlington Northern Inc. 176 East Fifth Street St. Paul, Minnesota 55101

The undersigned is the Lessor under the Equipment Lease and has knowledge of the matters set forth therein.

Please return the original and six copies of the Equipment Lease to Michael G. McGee, Chapman and Cutler, 111 West Monroe Street, Chicago, Illinois 60603.

Enclosed is a check in the amount of \$50.00 covering the required recording fee.

Very truly yours,

FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION

By [Signature]  
Its Vice President

Chapman & Cutler

JRP/ht

Enclosures

SCHEDULE A

DESCRIPTION OF EQUIPMENT

<u>QUANTITY</u>	<u>DESCRIPTION</u>	<u>IDENTIFYING MARK AND NUMBER</u>
300	40' dry van trailers	BNZ 205500-205799, both inclusive
150	40' FRP dry van trailers	BNZ 205300-205449, both inclusive
50	Reconstructed 40' FRP dry van trailers	BNZ 205450-205499, both inclusive

11032  
NOV 8 1979

INTERSTATE COMMERCE COMMISSION

## **EQUIPMENT LEASE**

**Dated as of November 1, 1979**

*Between*

**FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION**

*Lessor*

*And*

**BURLINGTON NORTHERN INC.**

*Lessee*

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**(Burlington Northern No. 79-4)  
(500 Dry Van Trailers)**

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Schedule A—DESCRIPTION OF ITEMS OF SCHEDULE A EQUIPMENT

Schedule B—DESCRIPTION OF ITEMS OF REBUILT EQUIPMENT

Schedule C—CERTIFICATE OF ACCEPTANCE

Schedule D—SCHEDULE OF CASUALTY VALUE

Schedule E—SCHEDULE OF TERMINATION VALUE

## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of November 1, 1979 is between FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION, a Delaware corporation (the "Lessor"), and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee").

### RECITALS:

A. Pursuant to a Purchase Order Assignment dated as of November 1, 1979, the Lessee has assigned to the Lessor its right to purchase the Equipment set forth in Schedule A hereto (the "Schedule A Equipment") from the Manufacturers (as defined in the Participation Agreement).

B. The Lessee and the Lessor have entered into a Hulk Purchase Agreement dated as of November 1, 1979 (the "Hulk Purchase Agreement") providing for the sale of 50 used chassis of dry van trailers (the "Hulks") by the Lessee to the Lessor, and the Lessor and Evans Transportation Company, Monon Trailer Division have further entered into a Reconstruction Agreement dated as of November 1, 1979 (the "Reconstruction Agreement") providing for the reconstruction by said Manufacturer of the Hulks into Items of Rebuilt Equipment (collectively the "Rebuilt Equipment" and individually "Items of Rebuilt Equipment") described in Schedule B attached hereto and made a part hereof in accordance with the specifications (the "Specifications") referred to in the Reconstruction Agreement. Collectively the equipment described in Schedules A and B shall be described as the "Equipment" and individually as "Items of Equipment".

C. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of November 1, 1979 (the "Participation Agreement") with Mercantile-Safe Deposit and Trust Company, as security trustee (the "Security Trustee"), and Aid Association for Lutherans and AAL Employees' Retirement Trust (the "Note Purchasers") providing for the commitment of the Lessor to acquire the Equipment. Under the Participation Agreement, the Note Purchasers will commit to purchase the 10.30% Secured Notes (the "Notes") of the Lessor in an amount equal to 61.25% of the Purchase Price (as defined therein) of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement-Trust Deed dated as of November 1, 1979 (the "Security Agreement") from the Lessor to Mercantile-Safe Deposit and Trust Company (the "Security Trustee").

### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

**1.1. Intent to Lease and Hire.** Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedules A and B hereto (hereinafter referred to as the "Manufacturers"), the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

**1.2. Inspection and Acceptance.** The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedules A and B hereto. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule C with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date applicable thereto in said Schedules A and B.

**1.3. Certificate of Acceptance.** The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively

establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturers, such Item of Equipment is acceptable to and accepted by the Lessee under the Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications, if any, and, as to Schedule A Equipment and Rebuilt Equipment, to all standards recommended by the Association of American Railroads applicable to new or rebuilt truck trailer equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## **SECTION 2. RENTALS AND PAYMENT DATES.**

**2.1. Fixed Rental for Equipment.** The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

*Fixed Rental.* For each Item of Equipment for which settlement has been made

(i) fourteen consecutive semiannual installments of fixed rental, payable in arrears, each in an amount equal to 6.3456% of the Purchase Price thereof, followed by (ii) six consecutive semiannual installments of fixed rental, payable in arrears, each in an amount equal to 3.1728% of the Purchase Price thereof.

The fixed rentals provided for in Sections 2.1(i) and 2.1(ii) are hereinafter sometimes referred to as "Fixed Rentals".

**2.2 Rent Payment Dates.** The first installment of Fixed Rental for each Item of Equipment shall be due and payable six months following the Term Lease Commencement Date and the balance of said installments shall be payable at six month intervals thereafter with the final such installment payable 10 years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Minnesota, Wisconsin or Oklahoma are authorized or required to close.

**2.3. Adjustment of Rentals.** (a) In determining the amount of each installment of Fixed Rental payable pursuant to Section 2.1 hereof, the Lessor and the Lessee have assumed that on each Closing Date, the Note Purchasers will purchase the principal amount of the Notes contemplated to be purchased thereby in the Participation Agreement so that, pursuant to Section 2.7 of the Participation Agreement the Lessor will not be required to issue to a substitute investor Notes at a rate higher than 10.30% per annum, nor will the Lessor be required to pay the entire amount of the Purchase Price of the Items of Equipment (as defined in the Participation Agreement) which were to have been settled for on such Closing Date. In the event that pursuant to Section 2.7 of the Participation Agreement, the Note Purchasers shall fail to purchase the Notes to be issued on a Closing Date and the Lessor shall either be required to issue Notes at a rate in excess of 10.30% per annum or the Lessor shall thereby be required to pay the entire amount of the Purchase Price of the Items of Equipment which were to have been settled for on such Closing Date in the manner provided in said Section 2.7, then the Lessee and the Lessor agree that the Fixed Rental shall be increased to an amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if the Note Purchasers had purchased the Notes on such Closing Date as so contemplated, and the Casualty Values (as defined in Section 11.6 hereof) shall similarly be adjusted in amounts reasonably determined by the Lessor.

(b) In the event that (i) the sum of all expenses paid by the Lessor pursuant to Section 2.5(a) and 2.5(b) of the Participation Agreement exceeds \$35,000, or (ii) the Deposit Dates or Closing Dates under the Participation Agreement occur on dates other than those set forth in Section 2.2(b) and 2.3 of the Participation Agreement or require the purchase of Notes by the Note Purchasers in amounts other than as expressed in Sections 2.2(b) and 2.3 of the Participation Agreement to be contemplated by the parties thereto, or (iii) the Reconstruction Price of the Rebuilt Equipment shall constitute greater than or less than 94.90% of the Purchase Price of the Rebuilt Equipment, or (iv) all 300 Items of Equipment to be delivered by Fruehauf Corporation (Fruehauf Division) are not delivered and accepted on or prior to December 31, 1979, or (v) the Lessor is required to make any payments to the Security Trustee pursuant to Sections 2.2(e) or 2.2(g) of the Participation Agreement, or (vi) an amendment to the tax law (1) shall be enacted and effective prior to the date of delivery and acceptance of the first Item of Equipment hereunder or (2) shall be enacted prior to December 31, 1979 and retroactively effective prior to such date of delivery and acceptance of the first Item of Equipment hereunder and which alters or eliminates any of the Tax Benefits (as defined in Section 6(a) of the Participation Agreement) or the applicable rate of taxation of income under the Code or under Oklahoma law, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if none of the conditions specified in clauses (i) through (vi) had occurred, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor.

(c) Anything in Section 2.3(a) or 2.3(b) hereof to the contrary notwithstanding, the amounts payable as installments of Fixed Rental and Casualty Values hereunder with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date under this Lease, and (ii) shall comply with the guidelines for Internal Revenue Service rulings on leveraged leases set forth in Revenue Procedures 75-21 and 75-28 as modified and effective as of the date hereof.

**2.4. Place and Manner of Rent Payment.** The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof pursuant to Section 2.3 hereof shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof;

(b) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchasers shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(c) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to Burlington Northern 79-4) and forwarded to the Lessor in the manner provided for notice in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchasers shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with

Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such notifying party;

(d) The amount of any payment owing to the Lessor pursuant to Sections 5, 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof shall be made directly to the Lessor without regard to the assignment of this Lease pursuant to Section 16 hereof;

(e) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(f) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

**2.5. Net Lease.** This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the 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 Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### **SECTION 3. TERM OF THE LEASE**

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate ten years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

#### **SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.**

**4.1. Retention of Title.** The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

**4.2. Duty to Number and Mark Equipment.** The Lessee will cause each Item of Equipment to be kept numbered with its trailer number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

“Leased from First Oklahoma Financial Services Corporation, as Lessor, and Subject to a Security Interest.”

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the trailer number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new trailer numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

**4.3. Prohibition Against Certain Designations.** Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

#### **SECTION 5. DISCLAIMER OF WARRANTIES.**

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR AND ANY ASSIGNEE THEREOF PURSUANT TO SECTION 16 HEREOF EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturers, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused

or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment.

## **SECTION 6. LESSEE'S INDEMNITY.**

**6.1. Scope of Indemnity.** The Lessee shall defend, indemnify and save harmless the Lessor, the Note Purchasers and the Security Trustee and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith, but not including any interim interest payable under the Notes) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

**6.2. Continuation of Indemnities and Assumptions.** The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

## **SECTION 7. RULES, LAWS AND REGULATIONS.**

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor. In the event the Lessee shall make any alteration, replacement, addition or modification to any Item of Equipment pursuant to this Section 7, the Lessor agrees that it will, if then required by applicable law, in the taxable year when made include the cost thereof in its gross income for Federal income tax purposes. The Lessee agrees that, within 30 days

after the close of any calendar quarter in which the Lessee has made any such alteration, replacement, addition or modification to any Item of Equipment pursuant to this Section 7 (the "Alterations"), the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made.

#### **SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.**

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### **SECTION 9. LIENS ON THE EQUIPMENT.**

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### **SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.**

**10.1. Filing.** Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Security Agreement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited in such public offices within or without the United States as the Lessor or any assignee under Section 16 hereof, may reasonably request for the protection of Lessor's title or the security interest of such assignee to the satisfaction of the Lessor's or such assignee's counsel and will furnish the Lessor and such assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or such assignee, for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. Without limiting the foregoing, the Lessee will take all such

other action, including proper notation of the interest of the Lessor in the Equipment and hereunder and the interest of the Note Purchasers on any certificate of title from time to time in effect with respect to each Item of Equipment to the extent the same is required by law or reasonably requested by the Lessor's or the Note Purchasers' counsel and will deliver to the Lessor and the Note Purchasers appropriate proof thereof. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

**10.2. Payment of Non-Income Taxes.** All payments to be made by the Lessee hereunder will be free of expenses to the Lessor, the Note Purchasers, the Security Trustee, or any other assignee under Section 16 hereof (the "Indemnitees"), for collection or other charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, federal or foreign taxes (excluding, however, (a) taxes which are imposed by any federal, state or local government or tax authority in the United States on or measured by the net or gross income of any Indemnitee, but not excluding franchise taxes, gross receipts taxes or such taxes and charges imposed by a State other than the State of Oklahoma or any political subdivision of the State of Oklahoma which are imposed in lieu of taxes on or measured by the gross income or gross receipts of any Indemnitee, provided, however, to the extent any Indemnitee utilizes any franchise or gross receipt tax paid by the Lessee to such taxing authority on behalf of such Indemnitee [or which was paid by the Lessee to such Indemnitee as reimbursement for such tax], as a credit against its State of Oklahoma income tax, such Indemnitee shall promptly refund to the Lessee an amount equal to the reduction in its Oklahoma income tax resulting from the utilization of such credit, or (b) taxes which are imposed by any taxing authority or governmental subdivision of a foreign country to the extent any Indemnitee is entitled to a credit therefor against its United States Federal income taxes [provided that taxes of any foreign country or subdivision thereof incurred as a result of the Indemnitee being taxed by such foreign country or such subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the Indemnitee is entitled to a credit against its United States Federal income taxes], or (c) any tax imposed as a direct result of a voluntary transfer or other voluntary disposition by any Indemnitee, or any transfer or disposition by any Indemnitee resulting from the bankruptcy or other proceeding for the relief of debtors in which such Indemnitee is the debtor, whether voluntary or involuntary, of any interest in any Item of Equipment or interest in rentals under this Lease), assessments or license certification or registration fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not, in the advance opinion of any Indemnitee, adversely affect the title, property or rights of any Indemnitee. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee, the Lessee shall reimburse such Indemnitee on presentation of an invoice therefor. Prior to making such payment, such Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show

the interests of each Indemnatee in such Items of Equipment or notify each Indemnatee of such requirement and make such reports in such manner as shall be satisfactory to such Indemnatee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

#### **SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE; EARLY TERMINATION**

**11.1. Insurance.** The Lessee covenants and agrees that it will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained for each Item of Equipment from time to time subject to this Lease, property insurance in such amounts and against such risks and with such insurers as shall be satisfactory to the Lessor and any assignee under Section 16 hereof; *provided*, that the Lessee will be permitted to self-insure to the extent it self-insures equipment similar in nature to the Equipment which it owns or leases, but in any event the Lessee shall maintain in effect such property insurance as is required by prudent industry practice in respect of equipment similar in nature to the Equipment. All such property insurance policies shall provide that the Lessor and the Lessee shall be named assureds and that losses shall be adjusted with the Lessee and that the proceeds thereof shall be payable to the Lessor and the Lessee as their interests shall appear; provided that so long as the principal of or interest on any Note shall remain unpaid, such policies shall provide that the losses, if any, shall be payable to any assignee under Section 16 hereof under a standard mortgage loss payable clause satisfactory to the Lessor and such assignee as their interests may appear. All proceeds of insurance received by the Lessor and such assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and such assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and such assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks required by prudent industry practice in respect of equipment similar in nature to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of equipment which it owns or leases which is similar in nature to the Equipment. The Lessee represents and warrants that, as of the date of execution of this Lease, it maintains in effect general public liability insurance with respect to its operations (including the Equipment) against damages because of bodily injury, including death, or damage to the property of others. The Lessee represents and agrees that all policies of insurance carried pursuant to the first sentence of this paragraph will name the Lessor, the Lessee and any assignee under Section 16 hereof as assureds.

All policies of insurance to be carried pursuant to this Section 11.1 shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each insured named therein. No such policy shall provide that the coverage thereunder for the benefit of the Lessor or any assignee under Section 16 hereof shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policies and the Lessee shall, upon the request of the Lessor or such assignee (but not more frequently than annually), furnish either a certificate of the insurer to such effect or a certificate of an officer of the Lessee or an opinion of counsel of the Lessee that no such policy contains such provisions. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and such assignee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 11.1.

**11.2. Duty of Lessee to Notify Lessor.** In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee thereof pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

**11.3. Sum Payable for Casualty Loss.** The Lessee, on the next succeeding rent payment date following notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

**11.4. Rent Termination.** Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

**11.5. Disposition of Equipment.** The Lessee shall as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may, to the extent the Casualty Value with respect thereto has been paid, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor.

**11.6. Casualty Value.** The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price (as defined in the Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule D and Annex I attached thereto opposite such date of payment.

**11.7. Risk of Loss.** The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

**11.8. Eminent Domain.** In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

**11.9 Early Termination.** Subject to the terms and conditions herein expressed, the Lessee shall have the following right to terminate this Lease prior to the end of the term hereof:

(a) If no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing then Lessee may at its option, upon not less than 180 days prior written notice to Lessor, terminate this Agreement with respect to all, but not less than all, of the Equipment, provided that (i) the effective date (hereinafter called the Termination Date) of such termination is a Fixed Rental payment date as set forth in Section 2.2 hereof, (ii) such Termination Date occurs on or after the seventh anniversary after the Term Lease Commencement Date, and (iii) no such termination shall be effective until the Equipment shall have been sold and all sums payable by the Lessee pursuant to Section 11.9(b) hereof have been paid in full.

(b) During the period from the giving of such notice until the Termination Date Lessor, and Lessee on behalf of Lessor, shall use reasonable efforts to obtain bids for the cash sale of the Equipment. Lessor and Lessee shall certify to each other in writing the amount and the terms of each bid received by them and the names and addresses of the parties submitting such bids. Subject to Lessor's right to reject bids as set forth in Section 11.9(c) hereof, on the Termination Date Lessor shall without recourse, representation or warranty, sell the Equipment to the highest bidder who shall have submitted such bid prior to such date on terms and conditions acceptable to Lessor in its sole and absolute discretion; provided that neither the Lessee or any person, firm or corporation affiliated with the Lessee may bid on or purchase the Equipment. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise. Upon such sale the Lessee shall pay to the Lessor an amount equal to (i) (A) the Termination Value of the Equipment plus (B) the actual expenses incurred by Lessor in making the sale, including without limitation storage, insurance, advertising, brokerage and attorney's fees and expenses incurred in connection with such sale, plus (C) if not previously paid, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, less (ii) the proceeds of such sale, to the extent that the proceeds of such sale do not exceed the sum of the Termination Value paid by Lessee and the actual expenses incurred by Lessor in making such sale. It is understood that the proceeds of such sale will be retained by the Lessor.

(c) If, within 60 days prior to the Termination Date, neither Lessor nor Lessee shall have received any bid for the sale of the Equipment or there shall not have been received any bid the terms and conditions thereof which shall be acceptable to Lessor, in its sole and absolute discretion, Lessor shall so advise Lessee. Thereupon, Lessee shall have the right (i) to notify Lessor, within 15 days following the giving of such advice, that Lessee will continue to lease the Equipment with the same effect as if Lessee had not given notice of termination with respect thereto or (ii) to pay to Lessor, on the Termination Date, the Termination Value of the Equipment, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, and thereupon Lessee shall have no further right with respect to the Equipment and no further obligations with respect to the Equipment except those which survive the expiration of the term of this Lease. In the event of a termination pursuant to this Section 11.9(c), the Equipment shall be returned by the Lessee to the Lessor in accordance with the provisions of Section 13 hereof.

(d) Notwithstanding the foregoing, if the Termination Value exceeds the amount of any bid which is acceptable to Lessor, Lessee may at its option upon written notice given to Lessor not less than 45 days prior to the Termination Date, elect to rescind Lessee's notice of termination,

whereupon this Lease shall not terminate but shall, provided that no Event of Default (or other event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) has occurred and is continuing hereunder and Lessor has not by reason thereof declared this Lease to be in default, continue in full force and effect as though no such notice of termination had been given by Lessee. In the event Lessee shall elect to rescind its notice of termination in accordance with the provisions of this Section 11.9(d), Lessee shall reimburse Lessor for all expenses which have been incurred in reliance upon any notice of termination by Lessee.

(e) Except as Lessee shall, in a timely fashion, have either exercised its right to continue to lease the Equipment pursuant to Section 11.9(c) hereof, or elected to rescind Lessee's notice of termination pursuant to Section 11.9(d) hereof, Lessee shall pay to Lessor all sums due pursuant to Section 11.9(b) hereof on the Termination Date, without asserting any setoff, counterclaim or other defense for any reason whatsoever.

(f) The Termination Value of the Equipment shall be an amount determined as of the Termination Date equal to that percentage of the Purchase Price of the Equipment set forth in the Schedule of Termination Value attached hereto as Schedule E opposite such date (the "Termination Value").

## **SECTION 12. ANNUAL REPORTS.**

**12.1. Duty of Lessee to Furnish.** On or before May 1 in each year, commencing with the year 1981, the Lessee will furnish to the Lessor, the Note Purchasers, the Security Trustee, and any other assignee pursuant to Section 16 hereof an accurate statement as of the preceding December 31 (a) showing the amount, description and trailer numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

**12.2. Lessor's Inspection Rights.** The Lessor, the Note Purchasers, the Security Trustee, and any other assignee pursuant to Section 16 hereof each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

**12.3 Other Reports.** The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Equipment or the interest of the Note Purchasers therein or the leasing thereof to the Lessee.

## **SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.**

Upon the expiration of the term of this Lease (or renewal thereof) with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor at such reasonable storage place at such location on property owned or leased by the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment at such place for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 60 days' written notice to the Lessee;

provided that the obligation of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain insurance of the scope and nature required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. All amounts earned in respect of the Equipment (after the date of expiration of this Lease, but not exceeding the rental or other similar charge for equipment) received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 90 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

#### **SECTION 14. DEFAULT.**

**14.1. Events of Default.** Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for ten days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) Any representation or warranty made by the Lessee herein or in the Participation Agreement, the Hulk Purchase Agreement or the Purchase Order Assignment or in any statement or certificate furnished to the Lessor, the Note Purchasers or the Security Trustee pursuant to or in connection with this Lease, the Participation Agreement, the Hulk Purchase Agreement or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the

obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act (as now constituted or as hereafter amended including any successor provision thereto), or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

**14.2. Remedies.** If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of an 8% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee

pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.4 hereof and the Fair Market Value for any Item of Equipment shall be determined in a similar manner with appropriate adjustments for sale rather than rental; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

**14.3. Cumulative Remedies.** The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

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

**14.5. Notice of Event of Default.** The Lessee also agrees to furnish to the Lessor, the Note Purchasers and the Security Trustee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## **SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.**

**15.1. Lessee's Duty to Return.** If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment at such location on property owned or leased by the Lessee or any railroad company affiliated with the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such place without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport each Item of Equipment one time to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct in writing to the Lessee, within thirty days of such request.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 60 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

**15.2. Specific Performance.** The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

**15.3. Lessor Appointed Lessee's Agent.** Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## **SECTION 16. ASSIGNMENTS BY LESSOR.**

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to

the Lessor pursuant to Sections 5, 6, 10.2, 11.1 [with respect to public liability insurance] and 20.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment. Anything in this Section 16 to the contrary notwithstanding, no transfer may be made by the Owner of any interest to any person in the event the assignment thereof to such person would result in a violation of the Clayton Act.

#### **SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.**

**17.1. Lessee's Rights to the Equipment.** So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

**17.2. Use and Possession on Lines Other Than Lessee's Own.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and the use thereof throughout the continental United States, Canada, Mexico and Puerto Rico, but only upon and subject to all the terms and conditions of this Lease; provided that the Lessee agrees that the use of the Equipment outside the continental United States shall be de minimis. In the absence of said default, the Lessee shall be entitled to sublease the Equipment to any affiliated company. The term "affiliated company" shall mean any company (the "Parent") owning not less than 80% of the Voting Stock of the Lessee, any Company (the "Holding Company") owning not less than 80% of the Voting Stock of the Parent, and any company not less than 80% of the Voting Stock of which is owned, directly or indirectly, by the Holding Company, the Parent or the Lessee. The term "Voting Stock" for any company shall mean capital stock having the right to vote for the election of the directors of such company. The Lessee may use the Equipment or any portion thereof in over the road or piggyback service and in connection therewith may permit any Item of Equipment to be transported by rail throughout the railroad system operated by it or its affiliated companies and by connecting and other carriers in the usual interchange of traffic. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

**17.3. Merger, Consolidation or Acquisition of Lessee.** Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of Properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

## **SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.**

**18.1. Right of First Refusal.** Provided that this Lease has not been earlier terminated and that no Event of Default, or any event or condition which, upon notice or lapse of time, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time within 90 days after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, after the end of such renewal term) sell, transfer or otherwise dispose of the Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessee shall not have notified the Lessor, within 20 days following receipt of such notice, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Items of Equipment, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice.

**18.2. Renewal Options.** Provided that this Lease has not been earlier terminated and that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for three additional renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease. The semiannual Fixed Rental payable for and during each such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2.

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease.

**18.3. Delivery of Equipment.** Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

**18.4. Determination of Fair Rental Value.** If on or before 90 days prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Items of Equipment, such value shall be determined in accordance with the foregoing definition, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the

parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 20 days after such notice is given, and the two appraisers so appointed shall within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Items of Equipment within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

**SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.**

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 11.30% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

**SECTION 20. MISCELLANEOUS.**

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

If to the Lessor: First Oklahoma Financial Services Corporation  
120 N. Robinson  
Oklahoma City, Oklahoma 73125  
Attention: FNB Leasing Company, Inc.  
Mr. Robert Radford  
Vice President

If to the Security Trustee: Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Post Office Box 2258  
Baltimore, Maryland 21203  
Attention: Corporate Trust Department

If to the Note Purchasers: Aid Association for Lutherans  
Appleton, Wisconsin 54919  
Attention: Investment Department  
AAL Employees' Retirement Trust  
c/o Aid Association For Lutherans  
Appleton, Wisconsin 54919  
Attention: Investment Department

If to the Lessee:

Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101  
Attention: Vice President and Treasurer

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

**20.2. Right of Lessor to Perform.** If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11.30% per annum.

**20.3. Execution in Counterparts.** This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

**20.4. Law Governing.** This Lease shall be construed in accordance with the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

**20.5. Headings and Table of Contents.** All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

**20.6. Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

[CORPORATE SEAL]

ATTEST:

*Phil S. Baum*  
Asst Secretary

FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION

By \_\_\_\_\_

VICE PRESIDENT

BURLINGTON NORTHERN INC.

By \_\_\_\_\_

Executive Vice President—Finance and Administration

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_

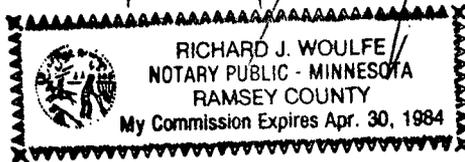
STATE OF ~~OKLAHOMA~~ }  
COUNTY OF ~~OKMURRAY~~ } SS

On this 6<sup>th</sup> day of *Nov*, 1979, before me personally appeared *ROBERT M. MADFORD* to me personally known, who being by me duly sworn, says that he is the **VICE PRESIDENT** of FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Richard J. Woulfe*  
\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:



STATE OF MINNESOTA }  
COUNTY OF RAMSEY } SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared FRANK H. COYNE, to me personally known, who being by me duly sworn, says that he is the Executive Vice President—Finance and Administration of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires:

**DESCRIPTION OF ITEMS OF SCHEDULE A EQUIPMENT**

Manufacturer of Equipment:	Fruehauf Corporation (Fruehauf Division)
Description and Mark and Number of Items of Equipment:	300 new 40' dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex I hereto
Base Purchase Price of Equipment:	\$12,333 per Item (\$3,700,000 for 300 Items)
Place of Delivery:	Fort Madison, Iowa
Manufacturer of Equipment:	Evans Transportation Company, Monon Trailer Division
Description and Mark and Number of Items of Equipment:	150 new 40' FRP dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex 2 hereto
Base Purchase Price of Equipment:	\$11,500 per Item (\$1,725,000 for 150 Items)
Place of Delivery:	Fridley, Minnesota
Maximum Aggregate Purchase Price of Schedule A Equipment:	\$5,696,250
Outside Delivery Date:	June 30, 1980

**(Burlington Northern No. 79-4)**

**SCHEDULE A  
(to Equipment Lease)**

**ANNEX I**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205500	MAV 593900	BNZ 205545	MAV 593945
BNZ 205501	MAV 593901	BNZ 205546	MAV 593946
BNZ 205502	MAV 593902	BNZ 205547	MAV 593947
BNZ 205503	MAV 593903	BNZ 205548	MAV 593948
BNZ 205504	MAV 593904	BNZ 205549	MAV 593949
BNZ 205505	MAV 593905	BNZ 205550	MAV 593950
BNZ 205506	MAV 593906	BNZ 205551	MAV 593951
BNZ 205507	MAV 593907	BNZ 205552	MAV 593952
BNZ 205508	MAV 593908	BNZ 205553	MAV 593953
BNZ 205509	MAV 593909	BNZ 205554	MAV 593954
BNZ 205510	MAV 593910	BNZ 205555	MAV 593955
BNZ 205511	MAV 593911	BNZ 205556	MAV 593956
BNZ 205512	MAV 593912	BNZ 205557	MAV 593957
BNZ 205513	MAV 593913	BNZ 205558	MAV 593958
BNZ 205514	MAV 593914	BNZ 205559	MAV 593959
BNZ 205515	MAV 593915	BNZ 205560	MAV 593960
BNZ 205516	MAV 593916	BNZ 205561	MAV 593961
BNZ 205517	MAV 593917	BNZ 205562	MAV 593962
BNZ 205518	MAV 593918	BNZ 205563	MAV 593963
BNZ 205519	MAV 593919	BNZ 205564	MAV 593964
BNZ 205520	MAV 593920	BNZ 205565	MAV 593965
BNZ 205521	MAV 593921	BNZ 205566	MAV 593966
BNZ 205522	MAV 593922	BNZ 205567	MAV 593967
BNZ 205523	MAV 593923	BNZ 205568	MAV 593968
BNZ 205524	MAV 593924	BNZ 205569	MAV 593969
BNZ 205525	MAV 593925	BNZ 205570	MAV 593970
BNZ 205526	MAV 593926	BNZ 205571	MAV 593971
BNZ 205527	MAV 593927	BNZ 205572	MAV 593972
BNZ 205528	MAV 593928	BNZ 205573	MAV 593973
BNZ 205529	MAV 593929	BNZ 205574	MAV 593974
BNZ 205530	MAV 593930	BNZ 205575	MAV 593975
BNZ 205531	MAV 593931	BNZ 205576	MAV 593976
BNZ 205532	MAV 593932	BNZ 205577	MAV 593977
BNZ 205533	MAV 593933	BNZ 205578	MAV 593978
BNZ 205534	MAV 593934	BNZ 205579	MAV 593979
BNZ 205535	MAV 593935	BNZ 205580	MAV 593980
BNZ 205536	MAV 593936	BNZ 205581	MAV 593981
BNZ 205537	MAV 593937	BNZ 205582	MAV 593982
BNZ 205538	MAV 593938	BNZ 205583	MAV 593983
BNZ 205539	MAV 593939	BNZ 205584	MAV 593984
BNZ 205540	MAV 593940	BNZ 205585	MAV 593985
BNZ 205541	MAV 593941	BNZ 205586	MAV 593986
BNZ 205542	MAV 593942	BNZ 205587	MAV 593987
BNZ 205543	MAV 593943	BNZ 205588	MAV 593988
BNZ 205544	MAV 593944	BNZ 205589	MAV 593989

**ANNEX I**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205590	MAV 593990	BNZ 205635	MAV 594035
BNZ 205591	MAV 593991	BNZ 205636	MAV 594036
BNZ 205592	MAV 593992	BNZ 205637	MAV 594037
BNZ 205593	MAV 593993	BNZ 205638	MAV 594038
BNZ 205594	MAV 593994	BNZ 205639	MAV 594039
BNZ 205595	MAV 593995	BNZ 205640	MAV 594040
BNZ 205596	MAV 593996	BNZ 205641	MAV 594041
BNZ 205597	MAV 593997	BNZ 205642	MAV 594042
BNZ 205598	MAV 593998	BNZ 205643	MAV 594043
BNZ 205599	MAV 593999	BNZ 205644	MAV 594044
BNZ 205600	MAV 594000	BNZ 205645	MAV 594045
BNZ 205601	MAV 594001	BNZ 205646	MAV 594046
BNZ 205602	MAV 594002	BNZ 205647	MAV 594047
BNZ 205603	MAV 594003	BNZ 205648	MAV 594048
BNZ 205604	MAV 594004	BNZ 205649	MAV 594049
BNZ 205605	MAV 594005	BNZ 205650	MAV 594050
BNZ 205606	MAV 594006	BNZ 205651	MAV 594051
BNZ 205607	MAV 594007	BNZ 205652	MAV 594052
BNZ 205608	MAV 594008	BNZ 205653	MAV 594053
BNZ 205609	MAV 594009	BNZ 205654	MAV 594054
BNZ 205610	MAV 594010	BNZ 205655	MAV 594055
BNZ 205611	MAV 594011	BNZ 205656	MAV 594056
BNZ 205612	MAV 594012	BNZ 205657	MAV 594057
BNZ 205613	MAV 594013	BNZ 205658	MAV 594058
BNZ 205614	MAV 594014	BNZ 205659	MAV 594059
BNZ 205615	MAV 594015	BNZ 205660	MAV 594060
BNZ 205616	MAV 594016	BNZ 205661	MAV 594061
BNZ 205617	MAV 594017	BNZ 205662	MAV 594062
BNZ 205618	MAV 594018	BNZ 205663	MAV 594063
BNZ 205619	MAV 594019	BNZ 205664	MAV 594064
BNZ 205620	MAV 594020	BNZ 205665	MAV 594065
BNZ 205621	MAV 594021	BNZ 205666	MAV 594066
BNZ 205622	MAV 594022	BNZ 205667	MAV 594067
BNZ 205623	MAV 594023	BNZ 205668	MAV 594068
BNZ 205624	MAV 594024	BNZ 205669	MAV 594069
BNZ 205625	MAV 594025	BNZ 205670	MAV 594070
BNZ 205626	MAV 594026	BNZ 205671	MAV 594071
BNZ 205627	MAV 594027	BNZ 205672	MAV 594072
BNZ 205628	MAV 594028	BNZ 205673	MAV 594073
BNZ 205629	MAV 594029	BNZ 205674	MAV 594074
BNZ 205630	MAV 594030	BNZ 205675	MAV 594075
BNZ 205631	MAV 594031	BNZ 205676	MAV 594076
BNZ 205632	MAV 594032	BNZ 205677	MAV 594077
BNZ 205633	MAV 594033	BNZ 205678	MAV 594078
BNZ 205634	MAV 594034	BNZ 205679	MAV 594079

**ANNEX I  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205680	MAV 594080	BNZ 205725	MAV 594125
BNZ 205681	MAV 594081	BNZ 205726	MAV 594126
BNZ 205682	MAV 594082	BNZ 205727	MAV 594127
BNZ 205683	MAV 594083	BNZ 205728	MAV 594128
BNZ 205684	MAV 594084	BNZ 205729	MAV 594129
BNZ 205685	MAV 594085	BNZ 205730	MAV 594130
BNZ 205686	MAV 594086	BNZ 205731	MAV 594131
BNZ 205687	MAV 594087	BNZ 205732	MAV 594132
BNZ 205688	MAV 594088	BNZ 205733	MAV 594133
BNZ 205689	MAV 594089	BNZ 205734	MAV 594134
BNZ 205690	MAV 594090	BNZ 205735	MAV 594135
BNZ 205691	MAV 594091	BNZ 205736	MAV 594136
BNZ 205692	MAV 594092	BNZ 205737	MAV 594137
BNZ 205693	MAV 594093	BNZ 205738	MAV 594138
BNZ 205694	MAV 594094	BNZ 205739	MAV 594139
BNZ 205695	MAV 594095	BNZ 205740	MAV 594140
BNZ 205696	MAV 594096	BNZ 205741	MAV 594141
BNZ 205697	MAV 594097	BNZ 205742	MAV 594142
BNZ 205698	MAV 594098	BNZ 205743	MAV 594143
BNZ 205699	MAV 594099	BNZ 205744	MAV 594144
BNZ 205700	MAV 594100	BNZ 205745	MAV 594145
BNZ 205701	MAV 594101	BNZ 205746	MAV 594146
BNZ 205702	MAV 594102	BNZ 205747	MAV 594147
BNZ 205703	MAV 594103	BNZ 205748	MAV 594148
BNZ 205704	MAV 594104	BNZ 205749	MAV 594149
BNZ 205705	MAV 594105	BNZ 205750	MAV 594150
BNZ 205706	MAV 594106	BNZ 205751	MAV 594151
BNZ 205707	MAV 594107	BNZ 205752	MAV 594152
BNZ 205708	MAV 594108	BNZ 205753	MAV 594153
BNZ 205709	MAV 594109	BNZ 205754	MAV 594154
BNZ 205710	MAV 594110	BNZ 205755	MAV 594155
BNZ 205711	MAV 594111	BNZ 205756	MAV 594156
BNZ 205712	MAV 594112	BNZ 205757	MAV 594157
BNZ 205713	MAV 594113	BNZ 205758	MAV 594158
BNZ 205714	MAV 594114	BNZ 205759	MAV 594159
BNZ 205715	MAV 594115	BNZ 205760	MAV 594160
BNZ 205716	MAV 594116	BNZ 205761	MAV 594161
BNZ 205717	MAV 594117	BNZ 205762	MAV 594162
BNZ 205718	MAV 594118	BNZ 205763	MAV 594163
BNZ 205719	MAV 594119	BNZ 205764	MAV 594164
BNZ 205720	MAV 594120	BNZ 205765	MAV 594165
BNZ 205721	MAV 594121	BNZ 205766	MAV 594166
BNZ 205722	MAV 594122	BNZ 205767	MAV 594167
BNZ 205723	MAV 594123	BNZ 205768	MAV 594168
BNZ 205724	MAV 594124	BNZ 205769	MAV 594169

**ANNEX I  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205770	MAV 594170	BNZ 205785	MAV 594185
BNZ 205771	MAV 594171	BNZ 205786	MAV 594186
BNZ 205772	MAV 594172	BNZ 205787	MAV 594187
BNZ 205773	MAV 594173	BNZ 205788	MAV 594188
BNZ 205774	MAV 594174	BNZ 205789	MAV 594189
BNZ 205775	MAV 594175	BNZ 205790	MAV 594190
BNZ 205776	MAV 594176	BNZ 205791	MAV 594191
BNZ 205777	MAV 594177	BNZ 205792	MAV 594192
BNZ 205778	MAV 594178	BNZ 205793	MAV 594193
BNZ 205779	MAV 594179	BNZ 205794	MAV 594194
BNZ 205780	MAV 594180	BNZ 205795	MAV 594195
BNZ 205781	MAV 594181	BNZ 205796	MAV 594196
BNZ 205782	MAV 594182	BNZ 205797	MAV 594197
BNZ 205783	MAV 594183	BNZ 205798	MAV 594198
BNZ 205784	MAV 594184	BNZ 205799	MAV 594199

**ANNEX II  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205300	46266	BNZ 205345	46311
BNZ 205301	46267	BNZ 205346	46312
BNZ 205302	46268	BNZ 205347	46313
BNZ 205303	46269	BNZ 205348	46314
BNZ 205304	46270	BNZ 205349	46315
BNZ 205305	46271	BNZ 205350	46316
BNZ 205306	46272	BNZ 205351	46317
BNZ 205307	46273	BNZ 205352	46318
BNZ 205308	46274	BNZ 205353	46319
BNZ 205309	46275	BNZ 205354	46320
BNZ 205310	46276	BNZ 205355	46321
BNZ 205311	46277	BNZ 205356	46322
BNZ 205312	46278	BNZ 205357	46323
BNZ 205313	46279	BNZ 205358	46324
BNZ 205314	46280	BNZ 205359	46325
BNZ 205315	46281	BNZ 205360	46326
BNZ 205316	46282	BNZ 205361	46327
BNZ 205317	46283	BNZ 205362	46328
BNZ 205318	46284	BNZ 205363	46329
BNZ 205319	46285	BNZ 205364	46330
BNZ 205320	46286	BNZ 205365	46331
BNZ 205321	46287	BNZ 205366	46332
BNZ 205322	46288	BNZ 205367	46333
BNZ 205323	46289	BNZ 205368	46334
BNZ 205324	46290	BNZ 205369	46335
BNZ 205325	46291	BNZ 205370	46336
BNZ 205326	46292	BNZ 205371	46337
BNZ 205327	46293	BNZ 205372	46338
BNZ 205328	46294	BNZ 205373	46339
BNZ 205329	46295	BNZ 205374	46340
BNZ 205330	46296	BNZ 205375	46341
BNZ 205331	46297	BNZ 205376	46342
BNZ 205332	46298	BNZ 205377	46343
BNZ 205333	46299	BNZ 205378	46344
BNZ 205334	46300	BNZ 205379	46345
BNZ 205335	46301	BNZ 205380	46346
BNZ 205336	46302	BNZ 205381	46347
BNZ 205337	46303	BNZ 205382	46348
BNZ 205338	46304	BNZ 205383	46349
BNZ 205339	46305	BNZ 205384	46350
BNZ 205340	46306	BNZ 205385	46351
BNZ 205341	46307	BNZ 205386	46352
BNZ 205342	46308	BNZ 205387	46353
BNZ 205343	46309	BNZ 205388	46354
BNZ 205344	46310	BNZ 205389	46355

**ANNEX II  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205390	46356	BNZ 205420	46386
BNZ 205391	46357	BNZ 205421	46387
BNZ 205392	46358	BNZ 205422	46388
BNZ 205393	46359	BNZ 205423	46389
BNZ 205394	46360	BNZ 205424	46390
BNZ 205395	46361	BNZ 205425	46391
BNZ 205396	46362	BNZ 205426	46392
BNZ 205397	46363	BNZ 205427	46393
BNZ 205398	46364	BNZ 205428	46394
BNZ 205399	46365	BNZ 205429	46395
BNZ 205400	46366	BNZ 205430	46396
BNZ 205401	46367	BNZ 205431	46397
BNZ 205402	46368	BNZ 205432	46398
BNZ 205403	46369	BNZ 205433	46399
BNZ 205404	46370	BNZ 205434	46400
BNZ 205405	46371	BNZ 205435	46401
BNZ 205406	46372	BNZ 205436	46402
BNZ 205407	46373	BNZ 205437	46403
BNZ 205408	46374	BNZ 205438	46404
BNZ 205409	46375	BNZ 205439	46405
BNZ 205410	46376	BNZ 205440	46406
BNZ 205411	46377	BNZ 205441	46407
BNZ 205412	46378	BNZ 205442	46408
BNZ 205413	46379	BNZ 205443	46409
BNZ 205414	46380	BNZ 205444	46410
BNZ 205415	46381	BNZ 205445	46411
BNZ 205416	46382	BNZ 205446	46412
BNZ 205417	46383	BNZ 205447	46413
BNZ 205418	46384	BNZ 205448	46414
BNZ 205419	46385	BNZ 205449	46415

**DESCRIPTION OF ITEMS OF  
REBUILT EQUIPMENT**

Manufacturer (Rebuilder) of Rebuilt Equipment:	Evans Transportation Company, Monon Trailer Division
Description and Mark and Number of Items of Rebuilt Equipment:	50 Reconstructed 40' FRP dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex I hereto
Base Purchase Price of Items of Rebuilt Equipment:	\$9,800 per Item (\$490,000 for 50 Items)
Maximum Aggregate Purchase Price of Rebuilt Equipment:	\$515,000
Place of Delivery:	Fridley, Minnesota
Outside Delivery Date:	June 30, 1980

**SCHEDULE B  
(to Equipment Lease)**

**ANNEX I**  
**(to Schedule B)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205450	46416	BNZ 205475	46441
BNZ 205451	46417	BNZ 205476	46442
BNZ 205452	46418	BNZ 205477	46443
BNZ 205453	46419	BNZ 205478	46444
BNZ 205454	46420	BNZ 205479	46445
BNZ 205455	46421	BNZ 205480	46446
BNZ 205456	46422	BNZ 205481	46447
BNZ 205457	46423	BNZ 205482	46448
BNZ 205458	46424	BNZ 205483	46449
BNZ 205459	46425	BNZ 205484	46450
BNZ 205460	46426	BNZ 205485	46451
BNZ 205461	46427	BNZ 205486	46452
BNZ 205462	46428	BNZ 205487	46453
BNZ 205463	46429	BNZ 205488	46454
BNZ 205464	46430	BNZ 205489	46455
BNZ 205465	46431	BNZ 205490	46456
BNZ 205466	46432	BNZ 205491	46457
BNZ 205467	46433	BNZ 205492	46458
BNZ 205468	46434	BNZ 205493	46459
BNZ 205469	46435	BNZ 205494	46460
BNZ 205470	46436	BNZ 205495	46461
BNZ 205471	46437	BNZ 205496	46462
BNZ 205472	46438	BNZ 205497	46463
BNZ 205473	46439	BNZ 205498	46464
BNZ 205474	46440	BNZ 205499	46465

**CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE**

To: **FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION**  
(the "Lessor")

(the "Manufacturer")

I, a duly appointed and authorized representative of **BURLINGTON NORTHERN INC.** (the "Lessee") under the Equipment Lease dated as of November 1, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment bearing the Lessee trailer number, the Manufacturer's identification number, place of acceptance and date of acceptance set forth in the following Schedule:

<u>Lessee's Trailer Number</u>	<u>Manufacturer's Identification Number</u>	<u>Date Accepted</u>	<u>Place of Acceptance</u>
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I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from First Oklahoma Financial Services Corporation, as Lessor, and  
Subject to a Security Interest."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 19

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*Inspector and Authorized  
Representative of the Lessee*

**(Burlington Northern No. 79-4)**

**SCHEDULE C  
(to Equipment Lease)**

**SCHEDULE OF CASUALTY VALUE**

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Term Lease Commencement Date of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
Term Lease Commencement Date .....	87.4042
January 1, 1981 .....	85.7707
July 1, 1981 .....	83.5741
January 1, 1982 .....	80.9971
July 1, 1982 .....	78.0892
January 1, 1983 .....	74.8590
July 1, 1983 .....	71.3401
January 1, 1984 .....	67.5471
July 1, 1984 .....	63.5039
January 1, 1985 .....	59.2392
July 1, 1985 .....	54.7671
January 1, 1986 .....	50.1317
July 1, 1986 .....	45.3371
January 1, 1987 .....	40.4425
July 1, 1987 .....	35.4357
January 1, 1988 .....	33.5040
July 1, 1988 .....	31.5385
January 1, 1989 .....	29.5027
July 1, 1989 .....	27.3754
January 1, 1990 .....	25.1715
July 1, 1990 .....	22.0000

**(Burlington Northern Trust No. 79-4)**

**SCHEDULE D  
(to Equipment Lease)**

**ANNEX 1 TO SCHEDULE D**

**(to Equipment Lease)**

The percentages set forth in Schedule D have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Schedule A Equipment or the Reconstruction portion of the Rebuilt Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third .....	19.1500
Fifth .....	12.7667
Seventh .....	6.3833

**SCHEDULE OF TERMINATION VALUE**

The Termination Value for an Item of Equipment payable on the 14th Fixed Rental payment date and on any Fixed Rental payment date thereafter shall mean an amount equal to the percentage of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Date of Fixed Rental Payment Date on which Termination Value is Paid</u>	<u>Percentage of Purchase Price Payable as Termination Value</u>
July 1, 1987 .....	35.4357
January 1, 1988 .....	33.5040
July 1, 1988 .....	31.5385
January 1, 1989 .....	29.5027
July 1, 1989 .....	27.3754
January 1, 1990 .....	25.1715

**SCHEDULE E  
(to Equipment Lease)**

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**EQUIPMENT LEASE**

**Dated as of November 1, 1979**

*Between*

**FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION**

*Lessor*

*And*

**BURLINGTON NORTHERN INC.**

*Lessee*

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**(Burlington Northern No. 79-4)  
(500 Dry Van Trailers)**

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## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of November 1, 1979 is between FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION, a Delaware corporation (the "Lessor"), and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee").

### RECITALS:

A. Pursuant to a Purchase Order Assignment dated as of November 1, 1979, the Lessee has assigned to the Lessor its right to purchase the Equipment set forth in Schedule A hereto (the "Schedule A Equipment") from the Manufacturers (as defined in the Participation Agreement).

B. The Lessee and the Lessor have entered into a Hulk Purchase Agreement dated as of November 1, 1979 (the "Hulk Purchase Agreement") providing for the sale of 50 used chassis of dry van trailers (the "Hulks") by the Lessee to the Lessor, and the Lessor and Evans Transportation Company, Monon Trailer Division have further entered into a Reconstruction Agreement dated as of November 1, 1979 (the "Reconstruction Agreement") providing for the reconstruction by said Manufacturer of the Hulks into Items of Rebuilt Equipment (collectively the "Rebuilt Equipment" and individually "Items of Rebuilt Equipment") described in Schedule B attached hereto and made a part hereof in accordance with the specifications (the "Specifications") referred to in the Reconstruction Agreement. Collectively the equipment described in Schedules A and B shall be described as the "Equipment" and individually as "Items of Equipment".

C. The Lessee and the Lessor intend to enter into a Participation Agreement dated as of November 1, 1979 (the "Participation Agreement") with Mercantile-Safe Deposit and Trust Company, as security trustee (the "Security Trustee"), and Aid Association for Lutherans and AAL Employees' Retirement Trust (the "Note Purchasers") providing for the commitment of the Lessor to acquire the Equipment. Under the Participation Agreement, the Note Purchasers will commit to purchase the 10.30% Secured Notes (the "Notes") of the Lessor in an amount equal to 61.25% of the Purchase Price (as defined therein) of each Item of Equipment. It is contemplated that the Participation Agreement will provide that the Notes will be secured by an assignment of the Lessor's right, title and interest in and to this Lease and in and to the Equipment pursuant to a Security Agreement-Trust Deed dated as of November 1, 1979 (the "Security Agreement") from the Lessor to Mercantile-Safe Deposit and Trust Company (the "Security Trustee").

### SECTION 1. LEASE AND DELIVERY OF EQUIPMENT.

**1.1. Intent to Lease and Hire.** Upon delivery of each Item of Equipment by the manufacturer thereof identified in Schedules A and B hereto (hereinafter referred to as the "Manufacturers"), the Lessee shall lease and let such Item of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth.

**1.2. Inspection and Acceptance.** The Lessor will cause each Item of Equipment to be tendered to the Lessee at the place of delivery set forth in Schedules A and B hereto. Upon such tender, the Lessee will cause an inspector designated and authorized by the Lessee to inspect the same, and, if such Item of Equipment is found to be in good order, to accept delivery of such Item of Equipment and to execute and deliver to the Lessor and the Manufacturer a Certificate of Acceptance (the "Certificate of Acceptance") in the form attached hereto as Schedule C with respect to such Item of Equipment; provided, however, that the Lessee shall not accept and the Lessor shall have no obligation to lease any Item of Equipment delivered after the Outside Delivery Date applicable thereto in said Schedules A and B.

**1.3. Certificate of Acceptance.** The Lessee's execution and delivery of a Certificate of Acceptance with respect to each Item of Equipment pursuant to Section 1.2 hereof shall conclusively

establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting the Lessee's or the Lessor's rights, if any, against the Manufacturers, such Item of Equipment is acceptable to and accepted by the Lessee under the Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Item of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications, if any, and, as to Schedule A Equipment and Rebuilt Equipment, to all standards recommended by the Association of American Railroads applicable to new or rebuilt truck trailer equipment of the character of the Equipment as of the date of this Lease. By execution and delivery of such Certificate of Acceptance, the Lessee represents that it has no knowledge of any such defect.

## **SECTION 2. RENTALS AND PAYMENT DATES.**

**2.1. Fixed Rental for Equipment.** The Lessee agrees to pay the Lessor the following rent for each Item of Equipment:

*Fixed Rental.* For each Item of Equipment for which settlement has been made

(i) fourteen consecutive semiannual installments of fixed rental, payable in arrears, each in an amount equal to 6.3456% of the Purchase Price thereof, followed by (ii) six consecutive semiannual installments of fixed rental, payable in arrears, each in an amount equal to 3.1728% of the Purchase Price thereof.

The fixed rentals provided for in Sections 2.1(i) and 2.1(ii) are hereinafter sometimes referred to as "Fixed Rentals".

**2.2 Rent Payment Dates.** The first installment of Fixed Rental for each Item of Equipment shall be due and payable six months following the Term Lease Commencement Date and the balance of said installments shall be payable at six month intervals thereafter with the final such installment payable 10 years following the Term Lease Commencement Date. If any of the rent payment dates is not a business day, the rent payment otherwise payable on such date shall be payable on the next succeeding business day. For purposes of this Lease, the term "business day" means calendar days, excluding Saturdays, Sundays and holidays on which banks in the State of Minnesota, Wisconsin or Oklahoma are authorized or required to close.

**2.3. Adjustment of Rentals.** (a) In determining the amount of each installment of Fixed Rental payable pursuant to Section 2.1 hereof, the Lessor and the Lessee have assumed that on each Closing Date, the Note Purchasers will purchase the principal amount of the Notes contemplated to be purchased thereby in the Participation Agreement so that, pursuant to Section 2.7 of the Participation Agreement the Lessor will not be required to issue to a substitute investor Notes at a rate higher than 10.30% per annum, nor will the Lessor be required to pay the entire amount of the Purchase Price of the Items of Equipment (as defined in the Participation Agreement) which were to have been settled for on such Closing Date. In the event that pursuant to Section 2.7 of the Participation Agreement, the Note Purchasers shall fail to purchase the Notes to be issued on a Closing Date and the Lessor shall either be required to issue Notes at a rate in excess of 10.30% per annum or the Lessor shall thereby be required to pay the entire amount of the Purchase Price of the Items of Equipment which were to have been settled for on such Closing Date in the manner provided in said Section 2.7, then the Lessee and the Lessor agree that the Fixed Rental shall be increased to an amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if the Note Purchasers had purchased the Notes on such Closing Date as so contemplated, and the Casualty Values (as defined in Section 11.6 hereof) shall similarly be adjusted in amounts reasonably determined by the Lessor.

(b) In the event that (i) the sum of all expenses paid by the Lessor pursuant to Section 2.5(a) and 2.5(b) of the Participation Agreement exceeds \$35,000, or (ii) the Deposit Dates or Closing Dates under the Participation Agreement occur on dates other than those set forth in Section 2.2(b) and 2.3 of the Participation Agreement or require the purchase of Notes by the Note Purchasers in amounts other than as expressed in Sections 2.2(b) and 2.3 of the Participation Agreement to be contemplated by the parties thereto, or (iii) the Reconstruction Price of the Rebuilt Equipment shall constitute greater than or less than 94.90% of the Purchase Price of the Rebuilt Equipment, or (iv) all 300 Items of Equipment to be delivered by Fruehauf Corporation (Fruehauf Division) are not delivered and accepted on or prior to December 31, 1979, or (v) the Lessor is required to make any payments to the Security Trustee pursuant to Sections 2.2(e) or 2.2(g) of the Participation Agreement, or (vi) an amendment to the tax law (1) shall be enacted and effective prior to the date of delivery and acceptance of the first Item of Equipment hereunder or (2) shall be enacted prior to December 31, 1979 and retroactively effective prior to such date of delivery and acceptance of the first Item of Equipment hereunder and which alters or eliminates any of the Tax Benefits (as defined in Section 6(a) of the Participation Agreement) or the applicable rate of taxation of income under the Code or under Oklahoma law, then the Lessee and the Lessor agree that the Fixed Rentals shall be adjusted to such amount as shall, in the reasonable opinion of the Lessor, cause the Lessor's after-tax economic and accounting yields and cash flows (computed on the same assumptions, including tax rates, as were utilized by the Lessor in originally evaluating this transaction) to equal the after-tax economic and accounting yields and cash flows that would have been realized by the Lessor if none of the conditions specified in clauses (i) through (vi) had occurred, and the Casualty Values shall similarly be adjusted in amounts reasonably determined by the Lessor.

(c) Anything in Section 2.3(a) or 2.3(b) hereof to the contrary notwithstanding, the amounts payable as installments of Fixed Rental and Casualty Values hereunder with respect to any Item of Equipment (i) shall in no event be reduced below amounts necessary to discharge that portion of the principal of and/or interest on the Notes due and payable on each rent payment date under this Lease, and (ii) shall comply with the guidelines for Internal Revenue Service rulings on leveraged leases set forth in Revenue Procedures 75-21 and 75-28 as modified and effective as of the date hereof.

**2.4. Place and Manner of Rent Payment.** The payments to be made by the Lessee under this Lease shall be made as follows:

(a) The portion of any installment of Fixed Rental resulting from an increase in the amount thereof pursuant to Section 2.3 hereof shall be paid in full to the Lessor by wire transfer to the principal office of the Lessor at the address provided for payments in Section 20.1 hereof;

(b) Each installment of Fixed Rental shall be paid to the Lessor by wire transfer to the principal office of the Lessor at the address thereof provided for payments in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchasers shall notify the Lessee in writing that the right to receive payment of such installment shall have been assigned in accordance with Section 16 hereof, the Lessee shall make such payment by wire transfer to the place designated in such notice or as otherwise designated from time to time in writing by such assignee; and provided further that in the event such notice shall direct the Lessee to divide such installment into not more than two portions and to pay each portion by wire transfer separately to not more than two parties, the Lessee agrees to do so;

(c) The entire amount of any payment of Casualty Value pursuant to Section 11 hereof shall be paid to the Lessor by a check drawn on a bank located in the continental United States (identifying the same as a payment of Casualty Value relating to Burlington Northern 79-4) and forwarded to the Lessor in the manner provided for notice in Section 20.1 hereof; provided that in the event either the Lessor or the Note Purchasers shall notify the Lessee in writing that the right to receive payment of such Casualty Value shall have been assigned in accordance with

Section 16 hereof, the Lessee shall make such payment by such check in the manner designated in such notice or as otherwise designated from time to time in writing by such notifying party;

(d) The amount of any payment owing to the Lessor pursuant to Sections 5, 6, 10.2, 11.1 (with respect to public liability insurance) and 20.2 hereof shall be made directly to the Lessor without regard to the assignment of this Lease pursuant to Section 16 hereof;

(e) The amount of any interest due in respect of the late payment of any rentals or other amounts pursuant to Section 19 hereof shall be paid to the party and in the manner herein provided to receive said rental or other amount; and

(f) All payments other than those above specified shall be made by the Lessee directly to the party to receive the same unless any such payment has previously been made by the Lessor or its assignee, in which case the Lessee shall reimburse the Lessor or its assignee, as the case may be, directly for such payment.

The Lessee agrees that it will make payments due hereunder by wire transfer where specified above at the opening of business on the due date of such payment of Federal or otherwise immediately available funds to the party to whom such payment is to be made, and where not so specified, such payment shall be made by check of the Lessee drawn on a bank located in the continental United States and mailed to the party to receive the same at the address herein provided or at such other address as the Lessee shall have been previously advised in writing.

**2.5. Net Lease.** This Lease is a net lease and the Lessee's obligation to pay all Fixed Rental and other amounts payable hereunder shall be absolute and unconditional under any and all circumstances and, without limiting the generality of the foregoing, the Lessee shall not be entitled to any abatement of rent or reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against any assignee of the Lessor pursuant to Section 16 hereof; nor except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of the Equipment by condemnation or otherwise, the lawful prohibition of Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment has been returned to the possession of the Lessor (for all purposes of this Lease any Item of Equipment shall not be deemed to have been returned to the Lessor's possession until all of the Lessee's obligations with respect to the return, transportation and storage thereof have been performed). To the extent permitted by applicable law, the 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 Items of Equipment except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee pursuant to Section 16 hereof for any reason whatsoever.

### **SECTION 3. TERM OF THE LEASE**

The term of this Lease as to each Item of Equipment shall begin on the date of the delivery to and acceptance by the Lessee of such Item of Equipment and, subject to the provisions of Sections 11, 14 and 18 hereof, shall terminate ten years following the Term Lease Commencement Date provided for in Section 2.1(a) hereof.

#### **SECTION 4. OWNERSHIP AND MARKING OF EQUIPMENT.**

**4.1. Retention of Title.** The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and possession and use thereof by the Lessee.

**4.2. Duty to Number and Mark Equipment.** The Lessee will cause each Item of Equipment to be kept numbered with its trailer number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon each side of each Item of Equipment in letters not less than one inch in height as follows:

“Leased from First Oklahoma Financial Services Corporation, as Lessor, and Subject to a Security Interest.”

with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Lessor to such Item of Equipment, its rights under this Lease and the rights of any assignee under Section 16 hereof. The Lessee will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced, obliterated or destroyed. The Lessee will not change the trailer number of any Item of Equipment except with the consent of the Lessor and in accordance with a statement of new trailer numbers to be substituted therefor, which consent and statement previously shall have been delivered to the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease shall have been filed, recorded or deposited.

**4.3. Prohibition Against Certain Designations.** Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

#### **SECTION 5. DISCLAIMER OF WARRANTIES.**

THE LESSOR LEASES THE EQUIPMENT, AS-IS, IN WHATEVER CONDITION IT MAY BE, WITHOUT ANY AGREEMENT, WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, BY THE LESSOR, AND THE LESSOR AND ANY ASSIGNEE THEREOF PURSUANT TO SECTION 16 HEREOF EXPRESSLY DISCLAIM ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO (A) THE FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OF ANY ITEM OR ITEMS OF EQUIPMENT, (B) THE LESSOR'S TITLE THERETO, (C) THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, (D) THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE EQUIPMENT, OR (E) ANY OTHER MATTER WHATSOEVER, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Manufacturers, provided, however, that if at any time an Event of Default shall have occurred and be continuing, the Lessor may assert and enforce, at the Lessee's sole cost and expense, such claims and rights. The Lessor shall have no responsibility or liability to the Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused

or alleged to be caused directly or indirectly by any Item of Equipment or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Item of Equipment or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Item of Equipment.

## **SECTION 6. LESSEE'S INDEMNITY.**

**6.1. Scope of Indemnity.** The Lessee shall defend, indemnify and save harmless the Lessor, the Note Purchasers and the Security Trustee and their respective successors and assigns from and against:

(a) any and all loss or damage to the Equipment, usual wear and tear excepted; and

(b) any claim, cause of action, damages, liability, cost or expense (including, without limitation, counsel fees and costs in connection therewith, but not including any interim interest payable under the Notes) which may be incurred in any manner by or for the account of any of them (i) relating to any Item of Equipment or any part thereof, including, without limitation, the construction, purchase, delivery, acceptance, rejection, ownership, sale, leasing, return or storage of any Item of Equipment or as a result of the use, maintenance, repair, replacement, operation or the condition thereof (whether defects are latent or discoverable by the Lessee or any indemnified party), (ii) by reason or as the result of any act or omission (whether negligent or otherwise) of the Lessee for itself or as agent or attorney-in-fact for the Lessor hereunder, (iii) as a result of claims for patent, trademark or copyright infringements, or (iv) as a result of claims for negligence or strict liability in tort.

The indemnities and assumptions of liabilities set forth in this Section 6.1 do not guarantee a residual value in the Equipment nor do they guarantee the payment of the Notes or any interest accrued thereon.

**6.2. Continuation of Indemnities and Assumptions.** The indemnities and assumptions of liability in this Section 6 contained shall continue in full force and effect notwithstanding the termination of this Lease, or the termination of the term hereof in respect of any one or more Items of Equipment, whether by expiration of time, by operation of law or otherwise; provided, however, that such indemnities and assumptions of liability shall not apply in respect of any matters referred to in subsection (a) or clause (i), (ii) or (iv) of subsection (b) of Section 6.1 hereof, occurring after the termination of this Lease, except for any such matters occurring after the termination arising in connection with the Lessee's assembling, delivering, storing or transporting of the Equipment as provided in Section 13 or 15, as the case may be. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of such claim or liability.

## **SECTION 7. RULES, LAWS AND REGULATIONS.**

The Lessee agrees to comply with all governmental laws, regulations, requirements and rules with respect to the use and maintenance of each Item of Equipment subject to this Lease. In case any equipment or appliance is required to be altered, added, replaced or modified on any Item of Equipment in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, additions, replacements and/or modifications at its own expense and title thereto shall be immediately vested in the Lessor. In the event the Lessee shall make any alteration, replacement, addition or modification to any Item of Equipment pursuant to this Section 7, the Lessor agrees that it will, if then required by applicable law, in the taxable year when made include the cost thereof in its gross income for Federal income tax purposes. The Lessee agrees that, within 30 days

after the close of any calendar quarter in which the Lessee has made any such alteration, replacement, addition or modification to any Item of Equipment pursuant to this Section 7 (the "Alterations"), the Lessee will give written notice thereof to the Lessor describing, in reasonable detail, the Alterations and specifying the cost thereof with respect to each Item of Equipment and the date or dates when made.

#### **SECTION 8. USE AND MAINTENANCE OF EQUIPMENT.**

The Lessee shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Lessee shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted. Except as required by the provisions of Section 7 hereof, the Lessee shall not modify any Item of Equipment without the prior written authority and approval of the Lessor and any assignee pursuant to Section 16 hereof which shall not be unreasonably withheld. Any parts installed or replacements made by the Lessee upon any Item of Equipment pursuant to Section 7 hereof or pursuant to its obligation to maintain and keep the Equipment in good order, condition and repair under this Section 8 shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Lessor without cost or expense to the Lessor. The Lessee shall make no other additions or improvements to any Item of Equipment unless the same are readily removable without causing material damage to such Item of Equipment. Title to any such readily removable additions or improvements shall remain with the Lessee. If the Lessee shall at its cost cause such readily removable additions or improvements to be made to any Item of Equipment, the Lessee agrees that it will, prior to the return of such Item of Equipment to the Lessor hereunder, remove the same at its own expense without causing material damage to such Item of Equipment.

#### **SECTION 9. LIENS ON THE EQUIPMENT.**

The Lessee shall pay or satisfy and discharge any and all claims against, through or under the Lessee and its successors or assigns which, if unpaid, might constitute or become a lien or a charge upon any Item of Equipment, and any liens or charges which may be levied against or imposed upon any Item of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate legal proceedings contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor or the security interest or other rights of any assignee under Section 16 hereof in and to the Equipment. The Lessee's obligations under this Section 9 shall survive the termination of this Lease.

#### **SECTION 10. FILING; PAYMENT OF STATE AND LOCAL TAXES.**

**10.1. Filing.** Prior to the delivery and acceptance of the first Item of Equipment, the Lessee will, at its sole expense, cause this Lease and the Security Agreement (or a financing statement or similar notice thereof if and to the extent permitted or required by applicable law) to be duly filed, recorded or deposited in such public offices within or without the United States as the Lessor or any assignee under Section 16 hereof, may reasonably request for the protection of Lessor's title or the security interest of such assignee to the satisfaction of the Lessor's or such assignee's counsel and will furnish the Lessor and such assignee proof thereof. The Lessee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, file, register and record (and will refile, reregister or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or such assignee, for the purpose of protecting the Lessor's title to, or such assignee's security interest in, any Item of Equipment to the satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this Lease, and in connection with any such action, will deliver to the Lessor and such assignee proof of such filings and an opinion of the Lessee's counsel that such action has been properly taken. Without limiting the foregoing, the Lessee will take all such

other action, including proper notation of the interest of the Lessor in the Equipment and hereunder and the interest of the Note Purchasers on any certificate of title from time to time in effect with respect to each Item of Equipment to the extent the same is required by law or reasonably requested by the Lessor's or the Note Purchasers' counsel and will deliver to the Lessor and the Note Purchasers appropriate proof thereof. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, recording and rerecording or depositing and redepositing of any such instruments or incident to the taking of such action.

**10.2. Payment of Non-Income Taxes.** All payments to be made by the Lessee hereunder will be free of expenses to the Lessor, the Note Purchasers, the Security Trustee, or any other assignee under Section 16 hereof (the "Indemnitees"), for collection or other charges and will be free of expense to the Indemnitees with respect to the amount of any local, state, federal or foreign taxes (excluding, however, (a) taxes which are imposed by any federal, state or local government or tax authority in the United States on or measured by the net or gross income of any Indemnitee, but not excluding franchise taxes, gross receipts taxes or such taxes and charges imposed by a State other than the State of Oklahoma or any political subdivision of the State of Oklahoma which are imposed in lieu of taxes on or measured by the gross income or gross receipts of any Indemnitee, provided, however, to the extent any Indemnitee utilizes any franchise or gross receipt tax paid by the Lessee to such taxing authority on behalf of such Indemnitee [or which was paid by the Lessee to such Indemnitee as reimbursement for such tax], as a credit against its State of Oklahoma income tax, such Indemnitee shall promptly refund to the Lessee an amount equal to the reduction in its Oklahoma income tax resulting from the utilization of such credit, or (b) taxes which are imposed by any taxing authority or governmental subdivision of a foreign country to the extent any Indemnitee is entitled to a credit therefor against its United States Federal income taxes [provided that taxes of any foreign country or subdivision thereof incurred as a result of the Indemnitee being taxed by such foreign country or such subdivision on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded in all cases, whether or not the Indemnitee is entitled to a credit against its United States Federal income taxes], or (c) any tax imposed as a direct result of a voluntary transfer or other voluntary disposition by any Indemnitee, or any transfer or disposition by any Indemnitee resulting from the bankruptcy or other proceeding for the relief of debtors in which such Indemnitee is the debtor, whether voluntary or involuntary, of any interest in any Item of Equipment or interest in rentals under this Lease), assessments or license certification or registration fees and any charges, fines or penalties in connection therewith (hereinafter called "Impositions") hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Security Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Item of Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon any Indemnitee solely by reason of its interest with respect thereto and will keep at all times all and every part of such Item of Equipment free and clear of all Impositions which might in any way affect the interest of any Indemnitee or result in a lien upon any such Item of Equipment; provided, however, that the Lessee shall be under no obligation to pay any Impositions so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the non-payment thereof does not, in the advance opinion of any Indemnitee, adversely affect the title, property or rights of any Indemnitee. If any Impositions shall have been charged or levied against any Indemnitee directly and paid by such Indemnitee, the Lessee shall reimburse such Indemnitee on presentation of an invoice therefor. Prior to making such payment, such Indemnitee shall promptly notify the Lessee of the Impositions charged or levied, and the Lessee shall have the opportunity to contest in good faith and by appropriate legal proceedings such Impositions, at its sole expense.

In the event any reports with respect to Impositions are required to be made on the basis of individual Items of Equipment, the Lessee will either make such reports in such manner as to show

the interests of each Indemnatee in such Items of Equipment or notify each Indemnatee of such requirement and make such reports in such manner as shall be satisfactory to such Indemnatee.

In the event that, during the continuance of this Lease, any Imposition accrues or becomes payable or is levied or assessed (or is attributable to the period of time during which this Lease is in existence) which the Lessee is or will be obligated to pay or reimburse, pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

## **SECTION 11. INSURANCE; PAYMENT FOR CASUALTY OCCURRENCE; EARLY TERMINATION**

**11.1. Insurance.** The Lessee covenants and agrees that it will at all times while this Lease is in effect, at its own expense, cause to be carried and maintained for each Item of Equipment from time to time subject to this Lease, property insurance in such amounts and against such risks and with such insurers as shall be satisfactory to the Lessor and any assignee under Section 16 hereof; *provided*, that the Lessee will be permitted to self-insure to the extent it self-insures equipment similar in nature to the Equipment which it owns or leases, but in any event the Lessee shall maintain in effect such property insurance as is required by prudent industry practice in respect of equipment similar in nature to the Equipment. All such property insurance policies shall provide that the Lessor and the Lessee shall be named assureds and that losses shall be adjusted with the Lessee and that the proceeds thereof shall be payable to the Lessor and the Lessee as their interests shall appear; provided that so long as the principal of or interest on any Note shall remain unpaid, such policies shall provide that the losses, if any, shall be payable to any assignee under Section 16 hereof under a standard mortgage loss payable clause satisfactory to the Lessor and such assignee as their interests may appear. All proceeds of insurance received by the Lessor and such assignee with respect to any Items of Equipment not suffering a Casualty Occurrence (as hereinafter defined) shall be paid to the Lessee upon proof satisfactory to the Lessor and such assignee that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Lessor and such assignee with respect to a Casualty Occurrence shall be credited toward the payment required by this Section 11 with respect to such Casualty Occurrence.

The Lessee covenants and agrees that it will, at all times while this Lease is in effect, at its own expense, cause to be carried and maintained public liability insurance in amounts and against risks required by prudent industry practice in respect of equipment similar in nature to the Equipment and in any event comparable to insurance maintained by the Lessee in respect of equipment which it owns or leases which is similar in nature to the Equipment. The Lessee represents and warrants that, as of the date of execution of this Lease, it maintains in effect general public liability insurance with respect to its operations (including the Equipment) against damages because of bodily injury, including death, or damage to the property of others. The Lessee represents and agrees that all policies of insurance carried pursuant to the first sentence of this paragraph will name the Lessor, the Lessee and any assignee under Section 16 hereof as assureds.

All policies of insurance to be carried pursuant to this Section 11.1 shall provide that the same shall not be cancelled or materially changed without at least 30 days' prior written notice to each insured named therein. No such policy shall provide that the coverage thereunder for the benefit of the Lessor or any assignee under Section 16 hereof shall be restricted, impaired or invalidated by any breach or violation by the Lessee of warranties, declarations or conditions contained in such policies and the Lessee shall, upon the request of the Lessor or such assignee (but not more frequently than annually), furnish either a certificate of the insurer to such effect or a certificate of an officer of the Lessee or an opinion of counsel of the Lessee that no such policy contains such provisions. The Lessee covenants and agrees that it will throughout the term hereof furnish to the Lessor and such assignee certificates of insurers or other satisfactory evidence of the maintenance of the insurance required by this Section 11.1.

**11.2. Duty of Lessee to Notify Lessor.** In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged during the term of this Lease or thereafter while such Item of Equipment is in the possession of the Lessee pursuant to Section 13 or 15 hereof, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise during the term of this Lease for a stated period which exceeds the then remaining term of this Lease (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly and fully (after it has knowledge of such Casualty Occurrence) inform the Lessor and any assignee thereof pursuant to Section 16 hereof in regard thereto and shall pay the Casualty Value (as defined in Section 11.6 hereof) of such Item in accordance with the terms of Section 11.3 hereof.

**11.3. Sum Payable for Casualty Loss.** The Lessee, on the next succeeding rent payment date following notice of a Casualty Occurrence with respect to any Item or Items of Equipment, shall pay to the Lessor the Fixed Rental installment due on such payment date for such Item of Equipment plus any rentals or other sums due on or prior to such date then remaining unpaid plus a sum equal to the Casualty Value of such Item of Equipment as of the date of such payment.

**11.4. Rent Termination.** Upon (and not until) payment of all sums required to be paid pursuant to Section 11.3 hereof in respect of any Item or Items of Equipment, the obligation to pay rent for such Item or Items of Equipment accruing subsequent to the Casualty Value payment date shall terminate, but the Lessee shall continue to pay rent for all other Items of Equipment.

**11.5. Disposition of Equipment.** The Lessee shall as agent for the Lessor, dispose of such Item or Items of Equipment having suffered a Casualty Occurrence as soon as it is able to do so for the fair market value thereof. Any such disposition shall be on an "as-is", "where-is" basis without representation or warranty, express or implied. As to each separate Item of Equipment so disposed of, the Lessee may, to the extent the Casualty Value with respect thereto has been paid, retain all amounts arising from such disposition plus any insurance proceeds and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any, to the Lessor.

**11.6. Casualty Value.** The Casualty Value of each Item of Equipment shall be an amount determined as of the date the Casualty Value is paid as provided in this Section 11 (and not the date of the Casualty Occurrence) equal to that percentage of the Purchase Price (as defined in the Participation Agreement) of such Item of Equipment set forth in the Schedule of Casualty Value attached hereto as Schedule D and Annex I attached thereto opposite such date of payment.

**11.7. Risk of Loss.** The Lessee shall bear the risk of loss and, except as hereinabove in this Section 11 provided, shall not be released from its obligations hereunder in the event of any Casualty Occurrence to any Item of Equipment from and after the date hereof and continuing until payment of the Casualty Value and all rental installments and other sums due on and prior to the date of payment of such Casualty Value in respect of such Item of Equipment has been made, such Item or the salvage thereof has been disposed of by the Lessee and the title to such Item or the salvage thereof and all risk of loss and liabilities incident to ownership have been transferred to the purchaser of such Item or the salvage thereof.

**11.8. Eminent Domain.** In the event that during the term of this Lease the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period which does not exceed the term of this Lease, the Lessee's obligation to pay all installments of rental and other sums shall continue for the duration of such requisitioning or taking. The Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any, shall be payable to and retained by the Lessor as its sole property.

**11.9 Early Termination.** Subject to the terms and conditions herein expressed, the Lessee shall have the following right to terminate this Lease prior to the end of the term hereof:

(a) If no Event of Default (or an event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) shall have occurred and be continuing then Lessee may at its option, upon not less than 180 days prior written notice to Lessor, terminate this Agreement with respect to all, but not less than all, of the Equipment, provided that (i) the effective date (hereinafter called the Termination Date) of such termination is a Fixed Rental payment date as set forth in Section 2.2 hereof, (ii) such Termination Date occurs on or after the seventh anniversary after the Term Lease Commencement Date, and (iii) no such termination shall be effective until the Equipment shall have been sold and all sums payable by the Lessee pursuant to Section 11.9(b) hereof have been paid in full.

(b) During the period from the giving of such notice until the Termination Date Lessor, and Lessee on behalf of Lessor, shall use reasonable efforts to obtain bids for the cash sale of the Equipment. Lessor and Lessee shall certify to each other in writing the amount and the terms of each bid received by them and the names and addresses of the parties submitting such bids. Subject to Lessor's right to reject bids as set forth in Section 11.9(c) hereof, on the Termination Date Lessor shall without recourse, representation or warranty, sell the Equipment to the highest bidder who shall have submitted such bid prior to such date on terms and conditions acceptable to Lessor in its sole and absolute discretion; provided that neither the Lessee or any person, firm or corporation affiliated with the Lessee may bid on or purchase the Equipment. An "affiliate" of the Lessee shall mean any person who possesses, directly or indirectly, the right to vote at least 10% of the voting securities of the Lessee and any person who, directly or indirectly, controls or is controlled by or is under common control with the Lessee, and "control" (including "controlled by" and "under common control with"), as used with respect to any person, shall mean the possession, directly or indirectly, of the power to direct or control the direction of the management and policies of such person, whether through the ownership of voting securities, by contract, or otherwise. Upon such sale the Lessee shall pay to the Lessor an amount equal to (i) (A) the Termination Value of the Equipment plus (B) the actual expenses incurred by Lessor in making the sale, including without limitation storage, insurance, advertising, brokerage and attorney's fees and expenses incurred in connection with such sale, plus (C) if not previously paid, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, less (ii) the proceeds of such sale, to the extent that the proceeds of such sale do not exceed the sum of the Termination Value paid by Lessee and the actual expenses incurred by Lessor in making such sale. It is understood that the proceeds of such sale will be retained by the Lessor.

(c) If, within 60 days prior to the Termination Date, neither Lessor nor Lessee shall have received any bid for the sale of the Equipment or there shall not have been received any bid the terms and conditions thereof which shall be acceptable to Lessor, in its sole and absolute discretion, Lessor shall so advise Lessee. Thereupon, Lessee shall have the right (i) to notify Lessor, within 15 days following the giving of such advice, that Lessee will continue to lease the Equipment with the same effect as if Lessee had not given notice of termination with respect thereto or (ii) to pay to Lessor, on the Termination Date, the Termination Value of the Equipment, the Fixed Rental installment due on such Termination Date and any other sums accrued and unpaid through and including such date, and thereupon Lessee shall have no further right with respect to the Equipment and no further obligations with respect to the Equipment except those which survive the expiration of the term of this Lease. In the event of a termination pursuant to this Section 11.9(c), the Equipment shall be returned by the Lessee to the Lessor in accordance with the provisions of Section 13 hereof.

(d) Notwithstanding the foregoing, if the Termination Value exceeds the amount of any bid which is acceptable to Lessor, Lessee may at its option upon written notice given to Lessor not less than 45 days prior to the Termination Date, elect to rescind Lessee's notice of termination,

whereupon this Lease shall not terminate but shall, provided that no Event of Default (or other event which would constitute an Event of Default but for the lapse of time or the giving of notice or both) has occurred and is continuing hereunder and Lessor has not by reason thereof declared this Lease to be in default, continue in full force and effect as though no such notice of termination had been given by Lessee. In the event Lessee shall elect to rescind its notice of termination in accordance with the provisions of this Section 11.9(d), Lessee shall reimburse Lessor for all expenses which have been incurred in reliance upon any notice of termination by Lessee.

(e) Except as Lessee shall, in a timely fashion, have either exercised its right to continue to lease the Equipment pursuant to Section 11.9(c) hereof, or elected to rescind Lessee's notice of termination pursuant to Section 11.9(d) hereof, Lessee shall pay to Lessor all sums due pursuant to Section 11.9(b) hereof on the Termination Date, without asserting any setoff, counterclaim or other defense for any reason whatsoever.

(f) The Termination Value of the Equipment shall be an amount determined as of the Termination Date equal to that percentage of the Purchase Price of the Equipment set forth in the Schedule of Termination Value attached hereto as Schedule E opposite such date (the "Termination Value").

## **SECTION 12. ANNUAL REPORTS.**

**12.1. Duty of Lessee to Furnish.** On or before May 1 in each year, commencing with the year 1981, the Lessee will furnish to the Lessor, the Note Purchasers, the Security Trustee, and any other assignee pursuant to Section 16 hereof an accurate statement as of the preceding December 31 (a) showing the amount, description and trailer numbers of the Items of Equipment then leased hereunder, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the 12 months ending on such December 31 (or since the date of this Lease, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 4.2 hereof shall have been preserved or replaced.

**12.2. Lessor's Inspection Rights.** The Lessor, the Note Purchasers, the Security Trustee, and any other assignee pursuant to Section 16 hereof each shall have the right, at their respective sole cost and expense, by their respective authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such time as shall be reasonably necessary to confirm thereto the existence and proper maintenance of the Equipment during the continuance of this Lease.

**12.3 Other Reports.** The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any Federal, state or other regulatory authority by reason of the ownership by the Lessor of the Equipment or the interest of the Note Purchasers therein or the leasing thereof to the Lessee.

## **SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.**

Upon the expiration of the term of this Lease (or renewal thereof) with respect to any Item of Equipment, the Lessee will, at its own cost and expense, at the request of the Lessor, deliver possession of such Item of Equipment to the Lessor at such reasonable storage place at such location on property owned or leased by the Lessee as the Lessor may designate, or in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Item of Equipment at such place for a period not exceeding 90 days and transport the same at any time within such 90-day period to any reasonable place on any railroad lines operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 60 days' written notice to the Lessee;

provided that the obligation of the Lessee to so transport shall be limited to only one such movement in respect of any such Item of Equipment. All movement and storage of each such Item is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Item, to inspect the same; provided, however, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser or lessee, the rights of inspection granted under this sentence. During any such storage period the Lessee shall maintain insurance of the scope and nature required by Section 11.1 hereof and maintain the Items of Equipment in such manner as the Lessee normally maintains similar equipment owned or leased by it in similar storage circumstances. All amounts earned in respect of the Equipment (after the date of expiration of this Lease, but not exceeding the rental or other similar charge for equipment) received therefor, shall belong to the Lessor and, if received by the Lessee, shall be promptly turned over to the Lessor. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 90 days after the expiration of this Lease, the Lessee shall, in addition, pay to the Lessor for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence. The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so assemble, deliver, store and transport the Equipment.

#### **SECTION 14. DEFAULT.**

**14.1. Events of Default.** Any of the following events shall constitute an Event of Default hereunder:

(a) Default shall be made in the payment of any part of the rental or Casualty Value provided in Section 2 or 11 hereof and such default shall continue for ten days;

(b) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or of possession of the Equipment, or any portion thereof;

(c) Default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 30 days after written notice from the Lessor to the Lessee, specifying the default and demanding the same to be remedied;

(d) Any representation or warranty made by the Lessee herein or in the Participation Agreement, the Hulk Purchase Agreement or the Purchase Order Assignment or in any statement or certificate furnished to the Lessor, the Note Purchasers or the Security Trustee pursuant to or in connection with this Lease, the Participation Agreement, the Hulk Purchase Agreement or the Purchase Order Assignment is untrue in any material respect as of the date of issuance or making thereof;

(e) Any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder, under any bankruptcy or insolvency law or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the

obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Lessee or for the property of the Lessee in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) A petition for reorganization under Section 77 of the Bankruptcy Act (as now constituted or as hereafter amended including any successor provision thereto), or under any other provision of Title 11 of the United States Code shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by such trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier.

**14.2. Remedies.** If any Event of Default has occurred and is continuing, the Lessor or, in the event this Lease shall be assigned to an assignee pursuant to Section 16 hereof, such assignee, at its option, may:

(a) Proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, including reasonable attorneys' fees; and/or

(b) By notice in writing to the Lessee, terminate this Lease, whereupon all right of the Lessee to the use of the Equipment shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon, the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Equipment may be located and take possession of all or any of the Items of Equipment and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use such Items for any purpose whatever, but the Lessor shall nevertheless have a right to recover from the Lessee any and all amounts which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, whichever of the following amounts the Lessor, in its sole discretion, shall specify: (x) a sum with respect to each Item of Equipment which represents the excess of the present worth, at the time of such termination, of all rentals for such Item which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease over the then present worth of the then Fair Rental Value of such Item for such period computed by discounting from the end of such term to the date of such termination rentals which the Lessor reasonably estimates to be obtainable for the use of such Item during such period, such present worth to be computed in each case on a basis of an 8% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, or (y) an amount equal to the excess if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the amount the Lessor reasonably estimates to be the Fair Market Value thereof at such time; provided, however, that in the event the Lessor shall have sold any Item of Equipment, the Lessor, in lieu of collecting any amounts payable to the Lessor by the Lessee pursuant to the preceding clauses (x) and (y) of this part (i) with respect thereto may, if it shall so elect, demand that the Lessee

pay the Lessor and the Lessee shall pay to the Lessor, on the date of such sale, as liquidated damages for loss of a bargain and not as a penalty, an amount equal to the excess, if any, of the Casualty Value of such Item of Equipment as of the rent payment date on or immediately preceding the date of termination over the net proceeds of such sale, and (ii) any damages and expenses, other than for a failure to pay rental, in addition thereto, including reasonable attorneys' fees, which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental.

For purposes of Section 14.2 above, the Fair Rental Value for any Item of Equipment shall be determined in the appraisal arrangements specified in Section 18.4 hereof and the Fair Market Value for any Item of Equipment shall be determined in a similar manner with appropriate adjustments for sale rather than rental; provided that any sale in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Market Value of such Item and any rental in a commercially reasonable manner of any Item of Equipment prior to any such determination shall conclusively establish the Fair Rental Value of such Item.

**14.3. Cumulative Remedies.** The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify any of the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims of any right to assert any offset against the rent payments due hereunder, and agrees to make the rent payments regardless of any offset or claim which may be asserted by the Lessee on its behalf in connection with the lease of the Equipment.

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

**14.5. Notice of Event of Default.** The Lessee also agrees to furnish to the Lessor, the Note Purchasers and the Security Trustee, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this Section 14.5 a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of the Lessee in this Lease contained, any corporate officer of the Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

## **SECTION 15. RETURN OF EQUIPMENT UPON DEFAULT.**

**15.1. Lessee's Duty to Return.** If the Lessor or any assignee of the Lessor pursuant to Section 16 hereof shall terminate this Lease pursuant to Section 14 hereof, the Lessee shall forthwith deliver possession of the Equipment to the Lessor. For the purpose of delivering possession of any Item of Equipment to the Lessor as above required, the Lessee shall at its own cost, expense and risk (except as hereinafter stated):

(a) Forthwith place such Equipment at such location on property owned or leased by the Lessee or any railroad company affiliated with the Lessee as the Lessor may designate or, in the absence of such designation, as the Lessee may select;

(b) Permit the Lessor to store such Equipment in such place without charge for insurance, rent or storage until such Equipment has been sold, leased or otherwise disposed of by the Lessor; and

(c) Transport each Item of Equipment one time to any place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as the Lessor may reasonably direct in writing to the Lessee, within thirty days of such request.

All amounts earned in respect of the Equipment after the date of termination of this Lease, but not exceeding the rental, per diem, or other similar charge for equipment received therefor, shall belong to the Lessor or in the event this Lease has been assigned pursuant to Section 16 hereof, to such assignee, and, if received by the Lessee, shall be promptly turned over to the Lessor, or in the case of such assignment, to such assignee. In the event any Item of Equipment is not assembled, delivered and stored as hereinabove provided within 60 days after the termination of this Lease, the Lessee shall, in addition, pay to the Lessor or, in the case of such assignment, to such assignee for each day thereafter an amount equal to the amount, if any, by which the Fair Rental Value (determined in the manner provided in Section 18 hereof) for such Item of Equipment for each such day exceeds the amount, if any, received by the Lessor or such assignee (either directly or from the Lessee) for such day for such Item pursuant to the preceding sentence.

**15.2. Specific Performance.** The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Equipment.

**15.3. Lessor Appointed Lessee's Agent.** Without in any way limiting the obligation of the Lessee under the foregoing provisions of this Section 15, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Items of Equipment to the Lessor, to demand and take possession of such Item in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Item.

## **SECTION 16. ASSIGNMENTS BY LESSOR.**

This Lease and all rent and all other sums due or to become due hereunder may be assigned in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. Upon notice to the Lessee of any such assignment, the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to or upon the written order of the assignee. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provision of this Lease shall not be subject to any abatement whatsoever and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever whether by reason of failure of or defect in the Lessor's title, or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except in the event of a wrongful act on the part of such assignee, the Lessee shall be unconditionally and absolutely obligated to pay such assignee all of the rents and other sums which are the subject matter of the assignment, (ii) said assignee shall, if an Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, have the sole right to exercise all rights, privileges and remedies (either in its own name or in the name of the Lessor for the use and benefit of said assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor (except those rights, privileges and remedies relating to amounts payable to

the Lessor pursuant to Sections 5, 6, 10.2, 11.1 [with respect to public liability insurance] and 20.2 hereof which shall remain enforceable by the Lessor), but if no Event of Default or event which with the lapse of time or giving of notice, or both, would constitute an Event of Default, shall have occurred and be continuing, said assignee and the Lessor may each exercise their respective rights, privileges and remedies stated in this Lease to be provided for their respective benefits, and (iii) all obligations of the Lessor to the Lessee under this Lease shall be and remain enforceable by the Lessee against, and only against, the Lessor.

It is understood and agreed that the right, title and interest of any such assignee in, to and under this Lease and the rents and other sums due and to become due hereunder shall by the express terms granting and conveying the same be subject to the interest of the Lessee in and to the Equipment. Anything in this Section 16 to the contrary notwithstanding, no transfer may be made by the Owner of any interest to any person in the event the assignment thereof to such person would result in a violation of the Clayton Act.

#### **SECTION 17. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.**

**17.1. Lessee's Rights to the Equipment.** So long as no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 17.2 hereof.

**17.2. Use and Possession on Lines Other Than Lessee's Own.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Equipment and the use thereof throughout the continental United States, Canada, Mexico and Puerto Rico, but only upon and subject to all the terms and conditions of this Lease; provided that the Lessee agrees that the use of the Equipment outside the continental United States shall be de minimis. In the absence of said default, the Lessee shall be entitled to sublease the Equipment to any affiliated company. The term "affiliated company" shall mean any company (the "Parent") owning not less than 80% of the Voting Stock of the Lessee, any Company (the "Holding Company") owning not less than 80% of the Voting Stock of the Parent, and any company not less than 80% of the Voting Stock of which is owned, directly or indirectly, by the Holding Company, the Parent or the Lessee. The term "Voting Stock" for any company shall mean capital stock having the right to vote for the election of the directors of such company. The Lessee may use the Equipment or any portion thereof in over the road or piggyback service and in connection therewith may permit any Item of Equipment to be transported by rail throughout the railroad system operated by it or its affiliated companies and by connecting and other carriers in the usual interchange of traffic. No assignment or sublease entered into by the Lessee hereunder shall relieve the Lessee of any liability or obligations hereunder, all of which shall be and remain those of a principal and not a surety.

**17.3. Merger, Consolidation or Acquisition of Lessee.** Nothing in this Section 17 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation into or with which the Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all of the lines of railroad of the Lessee, provided that such assignees, successors or transferees shall have duly assumed the obligations of the Lessee hereunder and that they will not, upon the effectiveness of such merger or consolidation or acquisition of properties and the assumption of such obligations, be in default under any provision of this Lease and that such merger or consolidation or acquisition of Properties shall not alter in any way the Lessee's obligations to the Lessor hereunder which shall be and remain those of a principal and not a guarantor.

## **SECTION 18. RIGHT OF FIRST REFUSAL; RENEWAL OPTIONS.**

**18.1. Right of First Refusal.** Provided that this Lease has not been earlier terminated and that no Event of Default, or any event or condition which, upon notice or lapse of time, would constitute an Event of Default, shall have occurred and be continuing, the Lessor shall not, at any time within 90 days after the end of the original term of this Lease (or, if the Lessee has renewed this Lease for a renewal term pursuant to Section 18.2 hereof, after the end of such renewal term) sell, transfer or otherwise dispose of the Equipment unless:

(a) the Lessor shall have received from a responsible purchaser or purchasers a bona fide offer or offers in writing to purchase in the aggregate all, but not less than all, of the Items of Equipment;

(b) the Lessor shall have given the Lessee notice (i) setting forth in detail the identity of such purchaser or purchasers, the proposed purchase price or prices, the proposed date of purchase and all other material terms and conditions of such purchase, including, without limitation, any arrangements for the financing of such purchase known to the Lessor, and (ii) offering to sell such Items of Equipment to the Lessee upon the same terms and conditions as those set forth in such notice; and

(c) the Lessee shall not have notified the Lessor, within 20 days following receipt of such notice, of its election to purchase such Items of Equipment upon such terms and conditions.

If the Lessee shall not have so elected to purchase such Items of Equipment, the Lessor may sell such Items of Equipment at a price and upon other terms and conditions no less favorable to the Lessor than those specified in such notice.

**18.2. Renewal Options.** Provided that this Lease has not been earlier terminated and that no Event of Default, or any event which with the lapse of time or the giving of notice, or both, would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to all, but not less than all, of the Items of Equipment then leased hereunder for three additional renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease. The semiannual Fixed Rental payable for and during each such renewal term shall be an amount equal to the Fair Rental Value (as hereinafter defined) of such Items of Equipment. Each renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor written notice of any such election 180 days prior to the commencement of any renewal term provided for in this Section 18.2.

(b) The Fair Rental Value of an Item of Equipment shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease.

**18.3. Delivery of Equipment.** Unless the Lessee has elected to purchase the Items of Equipment then leased hereunder or to renew this Lease in respect of such Items of Equipment as provided in this Section 18, all of such Items of Equipment shall be returned to the Lessor at the end of the original term, or the then current renewal term, as the case may be, in accordance with Section 13 hereof.

**18.4. Determination of Fair Rental Value.** If on or before 90 days prior to the expiration of any term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Rental Value of the Items of Equipment, such value shall be determined in accordance with the foregoing definition, by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the

parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 20 days after such notice is given, and the two appraisers so appointed shall within 25 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 25 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine such value of the Items of Equipment within 60 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of such value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as such value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining the Fair Rental Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

#### **SECTION 19. INTEREST ON OVERDUE RENTALS AND AMOUNT PAID BY LESSOR.**

Anything to the contrary herein contained notwithstanding any nonpayment of rent due hereunder, or amounts expended by the Lessor on behalf of the Lessee, shall result in the additional obligation on the part of the Lessee to pay also an amount equal to 11.30% per annum (or the lawful rate, whichever is less) on the overdue rentals and amounts expended for the period of time during which they are overdue or expended and not repaid.

#### **SECTION 20. MISCELLANEOUS.**

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

If to the Lessor: First Oklahoma Financial Services Corporation  
120 N. Robinson  
Oklahoma City, Oklahoma 73125  
Attention: FNB Leasing Company, Inc.  
Mr. Robert Radford  
Vice President

If to the Security Trustee: Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Post Office Box 2258  
Baltimore, Maryland 21203  
Attention: Corporate Trust Department

If to the Note Purchasers: Aid Association for Lutherans  
Appleton, Wisconsin 54919  
Attention: Investment Department  
AAL Employees' Retirement Trust  
c/o Aid Association For Lutherans  
Appleton, Wisconsin 54919  
Attention: Investment Department

If to the Lessee:

Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101  
Attention: Vice President and Treasurer

or addressed to any such party at such other address as such party shall hereafter furnish to such other parties in writing.

**20.2. Right of Lessor to Perform.** If the Lessee shall fail to comply with any of its covenants herein contained, either the Lessor or, in the case of an assignment by the Lessor pursuant to Section 16 hereof, the assignee thereunder may, but shall not be obligated to, make advances to perform the same and to take all such action as may be necessary to obtain such performance. Any payment so made by any such party and all cost and expense (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection therewith shall be payable by the Lessee to the party making the same upon demand as additional rent hereunder, with interest at the rate of 11.30% per annum.

**20.3. Execution in Counterparts.** This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument.

**20.4. Law Governing.** This Lease shall be construed in accordance with the laws of the State of Minnesota; provided, however, that the parties shall be entitled to all rights conferred by any applicable Federal statute, rule or regulation.

**20.5. Headings and Table of Contents.** All Section headings and the Table of Contents are inserted for convenience only and shall not affect any construction or interpretation of this Lease.

**20.6. Severability.** Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be as to such jurisdiction ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunder duly authorized and the corporate seals to be hereto affixed as of the day and year first above written.

FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION

By \_\_\_\_\_

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_

BURLINGTON NORTHERN INC.

By Frank H. Coyne  
Executive Vice President—Finance and Administration

[CORPORATE SEAL]

ATTEST:

J. Beach

STATE OF OKLAHOMA }  
COUNTY OF } SS

On this \_\_\_\_\_ day of \_\_\_\_\_, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
*Notary Public*

[NOTARIAL SEAL]

My commission expires:

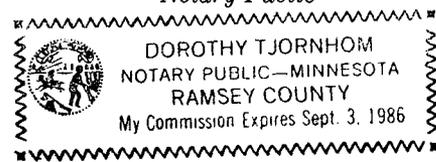
STATE OF MINNESOTA }  
COUNTY OF RAMSEY } SS

On this *5th* day of *Nov.*, 1979, before me personally appeared FRANK H. COYNE, to me personally known, who being by me duly sworn, says that he is the Executive Vice President—Finance and Administration of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Dorothy Tjornhom*  
\_\_\_\_\_  
*Notary Public*

[NOTARIAL SEAL]

My commission expires:



**DESCRIPTION OF ITEMS OF SCHEDULE A EQUIPMENT**

Manufacturer of Equipment:	Fruehauf Corporation (Fruehauf Division)
Description and Mark and Number of Items of Equipment:	300 new 40' dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex I hereto
Base Purchase Price of Equipment:	\$12,333 per Item (\$3,700,000 for 300 Items)
Place of Delivery:	Fort Madison, Iowa
Manufacturer of Equipment:	Evans Transportation Company, Monon Trailer Division
Description and Mark and Number of Items of Equipment:	150 new 40' FRP dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex 2 hereto
Base Purchase Price of Equipment:	\$11,500 per Item (\$1,725,000 for 150 Items)
Place of Delivery:	Fridley, Minnesota
Maximum Aggregate Purchase Price of Schedule A Equipment:	\$5,696,250
Outside Delivery Date:	June 30, 1980

**(Burlington Northern No. 79-4)**

**SCHEDULE A  
(to Equipment Lease)**

**ANNEX I  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205500	MAV 593900	BNZ 205545	MAV 593945
BNZ 205501	MAV 593901	BNZ 205546	MAV 593946
BNZ 205502	MAV 593902	BNZ 205547	MAV 593947
BNZ 205503	MAV 593903	BNZ 205548	MAV 593948
BNZ 205504	MAV 593904	BNZ 205549	MAV 593949
BNZ 205505	MAV 593905	BNZ 205550	MAV 593950
BNZ 205506	MAV 593906	BNZ 205551	MAV 593951
BNZ 205507	MAV 593907	BNZ 205552	MAV 593952
BNZ 205508	MAV 593908	BNZ 205553	MAV 593953
BNZ 205509	MAV 593909	BNZ 205554	MAV 593954
BNZ 205510	MAV 593910	BNZ 205555	MAV 593955
BNZ 205511	MAV 593911	BNZ 205556	MAV 593956
BNZ 205512	MAV 593912	BNZ 205557	MAV 593957
BNZ 205513	MAV 593913	BNZ 205558	MAV 593958
BNZ 205514	MAV 593914	BNZ 205559	MAV 593959
BNZ 205515	MAV 593915	BNZ 205560	MAV 593960
BNZ 205516	MAV 593916	BNZ 205561	MAV 593961
BNZ 205517	MAV 593917	BNZ 205562	MAV 593962
BNZ 205518	MAV 593918	BNZ 205563	MAV 593963
BNZ 205519	MAV 593919	BNZ 205564	MAV 593964
BNZ 205520	MAV 593920	BNZ 205565	MAV 593965
BNZ 205521	MAV 593921	BNZ 205566	MAV 593966
BNZ 205522	MAV 593922	BNZ 205567	MAV 593967
BNZ 205523	MAV 593923	BNZ 205568	MAV 593968
BNZ 205524	MAV 593924	BNZ 205569	MAV 593969
BNZ 205525	MAV 593925	BNZ 205570	MAV 593970
BNZ 205526	MAV 593926	BNZ 205571	MAV 593971
BNZ 205527	MAV 593927	BNZ 205572	MAV 593972
BNZ 205528	MAV 593928	BNZ 205573	MAV 593973
BNZ 205529	MAV 593929	BNZ 205574	MAV 593974
BNZ 205530	MAV 593930	BNZ 205575	MAV 593975
BNZ 205531	MAV 593931	BNZ 205576	MAV 593976
BNZ 205532	MAV 593932	BNZ 205577	MAV 593977
BNZ 205533	MAV 593933	BNZ 205578	MAV 593978
BNZ 205534	MAV 593934	BNZ 205579	MAV 593979
BNZ 205535	MAV 593935	BNZ 205580	MAV 593980
BNZ 205536	MAV 593936	BNZ 205581	MAV 593981
BNZ 205537	MAV 593937	BNZ 205582	MAV 593982
BNZ 205538	MAV 593938	BNZ 205583	MAV 593983
BNZ 205539	MAV 593939	BNZ 205584	MAV 593984
BNZ 205540	MAV 593940	BNZ 205585	MAV 593985
BNZ 205541	MAV 593941	BNZ 205586	MAV 593986
BNZ 205542	MAV 593942	BNZ 205587	MAV 593987
BNZ 205543	MAV 593943	BNZ 205588	MAV 593988
BNZ 205544	MAV 593944	BNZ 205589	MAV 593989

**ANNEX I**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205590	MAV 593990	BNZ 205635	MAV 594035
BNZ 205591	MAV 593991	BNZ 205636	MAV 594036
BNZ 205592	MAV 593992	BNZ 205637	MAV 594037
BNZ 205593	MAV 593993	BNZ 205638	MAV 594038
BNZ 205594	MAV 593994	BNZ 205639	MAV 594039
BNZ 205595	MAV 593995	BNZ 205640	MAV 594040
BNZ 205596	MAV 593996	BNZ 205641	MAV 594041
BNZ 205597	MAV 593997	BNZ 205642	MAV 594042
BNZ 205598	MAV 593998	BNZ 205643	MAV 594043
BNZ 205599	MAV 593999	BNZ 205644	MAV 594044
BNZ 205600	MAV 594000	BNZ 205645	MAV 594045
BNZ 205601	MAV 594001	BNZ 205646	MAV 594046
BNZ 205602	MAV 594002	BNZ 205647	MAV 594047
BNZ 205603	MAV 594003	BNZ 205648	MAV 594048
BNZ 205604	MAV 594004	BNZ 205649	MAV 594049
BNZ 205605	MAV 594005	BNZ 205650	MAV 594050
BNZ 205606	MAV 594006	BNZ 205651	MAV 594051
BNZ 205607	MAV 594007	BNZ 205652	MAV 594052
BNZ 205608	MAV 594008	BNZ 205653	MAV 594053
BNZ 205609	MAV 594009	BNZ 205654	MAV 594054
BNZ 205610	MAV 594010	BNZ 205655	MAV 594055
BNZ 205611	MAV 594011	BNZ 205656	MAV 594056
BNZ 205612	MAV 594012	BNZ 205657	MAV 594057
BNZ 205613	MAV 594013	BNZ 205658	MAV 594058
BNZ 205614	MAV 594014	BNZ 205659	MAV 594059
BNZ 205615	MAV 594015	BNZ 205660	MAV 594060
BNZ 205616	MAV 594016	BNZ 205661	MAV 594061
BNZ 205617	MAV 594017	BNZ 205662	MAV 594062
BNZ 205618	MAV 594018	BNZ 205663	MAV 594063
BNZ 205619	MAV 594019	BNZ 205664	MAV 594064
BNZ 205620	MAV 594020	BNZ 205665	MAV 594065
BNZ 205621	MAV 594021	BNZ 205666	MAV 594066
BNZ 205622	MAV 594022	BNZ 205667	MAV 594067
BNZ 205623	MAV 594023	BNZ 205668	MAV 594068
BNZ 205624	MAV 594024	BNZ 205669	MAV 594069
BNZ 205625	MAV 594025	BNZ 205670	MAV 594070
BNZ 205626	MAV 594026	BNZ 205671	MAV 594071
BNZ 205627	MAV 594027	BNZ 205672	MAV 594072
BNZ 205628	MAV 594028	BNZ 205673	MAV 594073
BNZ 205629	MAV 594029	BNZ 205674	MAV 594074
BNZ 205630	MAV 594030	BNZ 205675	MAV 594075
BNZ 205631	MAV 594031	BNZ 205676	MAV 594076
BNZ 205632	MAV 594032	BNZ 205677	MAV 594077
BNZ 205633	MAV 594033	BNZ 205678	MAV 594078
BNZ 205634	MAV 594034	BNZ 205679	MAV 594079

**ANNEX I**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205680	MAV 594080	BNZ 205725	MAV 594125
BNZ 205681	MAV 594081	BNZ 205726	MAV 594126
BNZ 205682	MAV 594082	BNZ 205727	MAV 594127
BNZ 205683	MAV 594083	BNZ 205728	MAV 594128
BNZ 205684	MAV 594084	BNZ 205729	MAV 594129
BNZ 205685	MAV 594085	BNZ 205730	MAV 594130
BNZ 205686	MAV 594086	BNZ 205731	MAV 594131
BNZ 205687	MAV 594087	BNZ 205732	MAV 594132
BNZ 205688	MAV 594088	BNZ 205733	MAV 594133
BNZ 205689	MAV 594089	BNZ 205734	MAV 594134
BNZ 205690	MAV 594090	BNZ 205735	MAV 594135
BNZ 205691	MAV 594091	BNZ 205736	MAV 594136
BNZ 205692	MAV 594092	BNZ 205737	MAV 594137
BNZ 205693	MAV 594093	BNZ 205738	MAV 594138
BNZ 205694	MAV 594094	BNZ 205739	MAV 594139
BNZ 205695	MAV 594095	BNZ 205740	MAV 594140
BNZ 205696	MAV 594096	BNZ 205741	MAV 594141
BNZ 205697	MAV 594097	BNZ 205742	MAV 594142
BNZ 205698	MAV 594098	BNZ 205743	MAV 594143
BNZ 205699	MAV 594099	BNZ 205744	MAV 594144
BNZ 205700	MAV 594100	BNZ 205745	MAV 594145
BNZ 205701	MAV 594101	BNZ 205746	MAV 594146
BNZ 205702	MAV 594102	BNZ 205747	MAV 594147
BNZ 205703	MAV 594103	BNZ 205748	MAV 594148
BNZ 205704	MAV 594104	BNZ 205749	MAV 594149
BNZ 205705	MAV 594105	BNZ 205750	MAV 594150
BNZ 205706	MAV 594106	BNZ 205751	MAV 594151
BNZ 205707	MAV 594107	BNZ 205752	MAV 594152
BNZ 205708	MAV 594108	BNZ 205753	MAV 594153
BNZ 205709	MAV 594109	BNZ 205754	MAV 594154
BNZ 205710	MAV 594110	BNZ 205755	MAV 594155
BNZ 205711	MAV 594111	BNZ 205756	MAV 594156
BNZ 205712	MAV 594112	BNZ 205757	MAV 594157
BNZ 205713	MAV 594113	BNZ 205758	MAV 594158
BNZ 205714	MAV 594114	BNZ 205759	MAV 594159
BNZ 205715	MAV 594115	BNZ 205760	MAV 594160
BNZ 205716	MAV 594116	BNZ 205761	MAV 594161
BNZ 205717	MAV 594117	BNZ 205762	MAV 594162
BNZ 205718	MAV 594118	BNZ 205763	MAV 594163
BNZ 205719	MAV 594119	BNZ 205764	MAV 594164
BNZ 205720	MAV 594120	BNZ 205765	MAV 594165
BNZ 205721	MAV 594121	BNZ 205766	MAV 594166
BNZ 205722	MAV 594122	BNZ 205767	MAV 594167
BNZ 205723	MAV 594123	BNZ 205768	MAV 594168
BNZ 205724	MAV 594124	BNZ 205769	MAV 594169

**ANNEX I  
(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205770	MAV 594170	BNZ 205785	MAV 594185
BNZ 205771	MAV 594171	BNZ 205786	MAV 594186
BNZ 205772	MAV 594172	BNZ 205787	MAV 594187
BNZ 205773	MAV 594173	BNZ 205788	MAV 594188
BNZ 205774	MAV 594174	BNZ 205789	MAV 594189
BNZ 205775	MAV 594175	BNZ 205790	MAV 594190
BNZ 205776	MAV 594176	BNZ 205791	MAV 594191
BNZ 205777	MAV 594177	BNZ 205792	MAV 594192
BNZ 205778	MAV 594178	BNZ 205793	MAV 594193
BNZ 205779	MAV 594179	BNZ 205794	MAV 594194
BNZ 205780	MAV 594180	BNZ 205795	MAV 594195
BNZ 205781	MAV 594181	BNZ 205796	MAV 594196
BNZ 205782	MAV 594182	BNZ 205797	MAV 594197
BNZ 205783	MAV 594183	BNZ 205798	MAV 594198
BNZ 205784	MAV 594184	BNZ 205799	MAV 594199

**ANNEX II**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205300	46266	BNZ 205345	46311
BNZ 205301	46267	BNZ 205346	46312
BNZ 205302	46268	BNZ 205347	46313
BNZ 205303	46269	BNZ 205348	46314
BNZ 205304	46270	BNZ 205349	46315
BNZ 205305	46271	BNZ 205350	46316
BNZ 205306	46272	BNZ 205351	46317
BNZ 205307	46273	BNZ 205352	46318
BNZ 205308	46274	BNZ 205353	46319
BNZ 205309	46275	BNZ 205354	46320
BNZ 205310	46276	BNZ 205355	46321
BNZ 205311	46277	BNZ 205356	46322
BNZ 205312	46278	BNZ 205357	46323
BNZ 205313	46279	BNZ 205358	46324
BNZ 205314	46280	BNZ 205359	46325
BNZ 205315	46281	BNZ 205360	46326
BNZ 205316	46282	BNZ 205361	46327
BNZ 205317	46283	BNZ 205362	46328
BNZ 205318	46284	BNZ 205363	46329
BNZ 205319	46285	BNZ 205364	46330
BNZ 205320	46286	BNZ 205365	46331
BNZ 205321	46287	BNZ 205366	46332
BNZ 205322	46288	BNZ 205367	46333
BNZ 205323	46289	BNZ 205368	46334
BNZ 205324	46290	BNZ 205369	46335
BNZ 205325	46291	BNZ 205370	46336
BNZ 205326	46292	BNZ 205371	46337
BNZ 205327	46293	BNZ 205372	46338
BNZ 205328	46294	BNZ 205373	46339
BNZ 205329	46295	BNZ 205374	46340
BNZ 205330	46296	BNZ 205375	46341
BNZ 205331	46297	BNZ 205376	46342
BNZ 205332	46298	BNZ 205377	46343
BNZ 205333	46299	BNZ 205378	46344
BNZ 205334	46300	BNZ 205379	46345
BNZ 205335	46301	BNZ 205380	46346
BNZ 205336	46302	BNZ 205381	46347
BNZ 205337	46303	BNZ 205382	46348
BNZ 205338	46304	BNZ 205383	46349
BNZ 205339	46305	BNZ 205384	46350
BNZ 205340	46306	BNZ 205385	46351
BNZ 205341	46307	BNZ 205386	46352
BNZ 205342	46308	BNZ 205387	46353
BNZ 205343	46309	BNZ 205388	46354
BNZ 205344	46310	BNZ 205389	46355

**ANNEX II**  
**(to Schedule A)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205390	46356	BNZ 205420	46386
BNZ 205391	46357	BNZ 205421	46387
BNZ 205392	46358	BNZ 205422	46388
BNZ 205393	46359	BNZ 205423	46389
BNZ 205394	46360	BNZ 205424	46390
BNZ 205395	46361	BNZ 205425	46391
BNZ 205396	46362	BNZ 205426	46392
BNZ 205397	46363	BNZ 205427	46393
BNZ 205398	46364	BNZ 205428	46394
BNZ 205399	46365	BNZ 205429	46395
BNZ 205400	46366	BNZ 205430	46396
BNZ 205401	46367	BNZ 205431	46397
BNZ 205402	46368	BNZ 205432	46398
BNZ 205403	46369	BNZ 205433	46399
BNZ 205404	46370	BNZ 205434	46400
BNZ 205405	46371	BNZ 205435	46401
BNZ 205406	46372	BNZ 205436	46402
BNZ 205407	46373	BNZ 205437	46403
BNZ 205408	46374	BNZ 205438	46404
BNZ 205409	46375	BNZ 205439	46405
BNZ 205410	46376	BNZ 205440	46406
BNZ 205411	46377	BNZ 205441	46407
BNZ 205412	46378	BNZ 205442	46408
BNZ 205413	46379	BNZ 205443	46409
BNZ 205414	46380	BNZ 205444	46410
BNZ 205415	46381	BNZ 205445	46411
BNZ 205416	46382	BNZ 205446	46412
BNZ 205417	46383	BNZ 205447	46413
BNZ 205418	46384	BNZ 205448	46414
BNZ 205419	46385	BNZ 205449	46415

**DESCRIPTION OF ITEMS OF  
REBUILT EQUIPMENT**

Manufacturer (Rebuilder) of Rebuilt Equipment:	Evans Transportation Company, Monon Trailer Division
Description and Mark and Number of Items of Rebuilt Equipment:	50 Reconstructed 40' FRP dry van trailers bearing manufacturer's identification numbers and Lessee's Trailer Numbers set forth in Annex I hereto
Base Purchase Price of Items of Rebuilt Equipment:	\$9,800 per Item (\$490,000 for 50 Items)
Maximum Aggregate Purchase Price of Rebuilt Equipment:	\$515,000
Place of Delivery:	Fridley, Minnesota
Outside Delivery Date:	June 30, 1980

**SCHEDULE B  
(to Equipment Lease)**

**ANNEX I**  
**(to Schedule B)**

**EQUIPMENT NUMBERS**

<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>	<b><u>Lessee Trailer Mark and Number</u></b>	<b><u>Manufacturer's Identification Numbers</u></b>
BNZ 205450	46416	BNZ 205475	46441
BNZ 205451	46417	BNZ 205476	46442
BNZ 205452	46418	BNZ 205477	46443
BNZ 205453	46419	BNZ 205478	46444
BNZ 205454	46420	BNZ 205479	46445
BNZ 205455	46421	BNZ 205480	46446
BNZ 205456	46422	BNZ 205481	46447
BNZ 205457	46423	BNZ 205482	46448
BNZ 205458	46424	BNZ 205483	46449
BNZ 205459	46425	BNZ 205484	46450
BNZ 205460	46426	BNZ 205485	46451
BNZ 205461	46427	BNZ 205486	46452
BNZ 205462	46428	BNZ 205487	46453
BNZ 205463	46429	BNZ 205488	46454
BNZ 205464	46430	BNZ 205489	46455
BNZ 205465	46431	BNZ 205490	46456
BNZ 205466	46432	BNZ 205491	46457
BNZ 205467	46433	BNZ 205492	46458
BNZ 205468	46434	BNZ 205493	46459
BNZ 205469	46435	BNZ 205494	46460
BNZ 205470	46436	BNZ 205495	46461
BNZ 205471	46437	BNZ 205496	46462
BNZ 205472	46438	BNZ 205497	46463
BNZ 205473	46439	BNZ 205498	46464
BNZ 205474	46440	BNZ 205499	46465

**CERTIFICATE OF ACCEPTANCE  
UNDER EQUIPMENT LEASE**

To: **FIRST OKLAHOMA FINANCIAL SERVICES CORPORATION**  
(the "Lessor")

(the "Manufacturer")

I, a duly appointed and authorized representative of **BURLINGTON NORTHERN INC.** (the "Lessee") under the Equipment Lease dated as of November 1, 1979 between the Lessor and the Lessee, do hereby certify that I have inspected, received, approved and accepted delivery under the Lease of the following Items of Equipment bearing the Lessee trailer number, the Manufacturer's identification number, place of acceptance and date of acceptance set forth in the following Schedule:

<u>Lessee's Trailer Number</u>	<u>Manufacturer's Identification Number</u>	<u>Date Accepted</u>	<u>Place of Acceptance</u>
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I do further certify that the foregoing Items of Equipment are in good order and condition, and appear to conform to the specifications applicable thereto, that the Lessee has no knowledge of any defect in any of the foregoing Items of Equipment with respect to design, manufacture, condition or in any other respect, and that each Item has been labeled by means of a plate or a stencil printed in contrasting colors upon each side of the Item in letters not less than one inch in height as follows:

"Leased from First Oklahoma Financial Services Corporation, as Lessor, and  
Subject to a Security Interest."

The execution of this Certificate will in no way relieve or decrease the responsibility of the Manufacturer for any warranties it has made with respect to the Equipment.

Dated: \_\_\_\_\_, 19

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*Inspector and Authorized  
Representative of the Lessee*

**(Burlington Northern No. 79-4)**

**SCHEDULE C  
(to Equipment Lease)**

**SCHEDULE OF CASUALTY VALUE**

The Casualty Value for an Item of Equipment payable on the Term Lease Commencement Date or any Fixed Rental payment date thereafter shall mean an amount equal to the percent of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Term Lease Commencement Date of Fixed Rental Payment Date on which Casualty Value is Paid</u>	<u>Percentage of Purchase Price Payable as Casualty Value</u>
Term Lease Commencement Date .....	87.4042
January 1, 1981 .....	85.7707
July 1, 1981 .....	83.5741
January 1, 1982 .....	80.9971
July 1, 1982 .....	78.0892
January 1, 1983 .....	74.8590
July 1, 1983 .....	71.3401
January 1, 1984 .....	67.5471
July 1, 1984 .....	63.5039
January 1, 1985 .....	59.2392
July 1, 1985 .....	54.7671
January 1, 1986 .....	50.1317
July 1, 1986 .....	45.3371
January 1, 1987 .....	40.4425
July 1, 1987 .....	35.4357
January 1, 1988 .....	33.5040
July 1, 1988 .....	31.5385
January 1, 1989 .....	29.5027
July 1, 1989 .....	27.3754
January 1, 1990 .....	25.1715
July 1, 1990 .....	22.0000

**(Burlington Northern Trust No. 79-4)**

**SCHEDULE D  
(to Equipment Lease)**

**ANNEX 1 TO SCHEDULE D**

**(to Equipment Lease)**

The percentages set forth in Schedule D have been computed without regard to recapture of the Investment Credit provided for in Section 38 and related sections of the Internal Revenue Code of 1954, as amended. Consequently, the Casualty Value of any Item of Schedule A Equipment or the Reconstruction portion of the Rebuilt Equipment suffering a Casualty Occurrence on or before the third, fifth or seventh anniversary of the date of delivery and acceptance of such Item shall be increased by the applicable percentage of the Purchase Price set forth below:

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third .....	19.1500
Fifth .....	12.7667
Seventh .....	6.3833

**SCHEDULE OF TERMINATION VALUE**

The Termination Value for an Item of Equipment payable on the 14th Fixed Rental payment date and on any Fixed Rental payment date thereafter shall mean an amount equal to the percentage of the Purchase Price of such Item set forth opposite such date in the following schedule:

<u>Date of Fixed Rental Payment Date on which Termination Value is Paid</u>	<u>Percentage of Purchase Price Payable as Termination Value</u>
July 1, 1987 .....	35.4357
January 1, 1988 .....	33.5040
July 1, 1988 .....	31.5385
January 1, 1989 .....	29.5027
July 1, 1989 .....	27.3754
January 1, 1990 .....	25.1715

**SCHEDULE E  
(to Equipment Lease)**