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INTEGRAL COMMERCE COMMISSION

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## AGREEMENT AND ASSIGNMENT

*Dated as of September 1, 1974*

*Between*

**PROFESSIONAL LEASE MANAGEMENT, INC.**

*as Vendor*

*and*

**FIRST NATIONAL BANK OF MINNEAPOLIS**

*as Agent and Assignee*

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## AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of September 1, 1974, between PROFESSIONAL LEASE MANAGEMENT, INC., a California corporation ("Vendor") and FIRST NATIONAL BANK OF MINNEAPOLIS, acting as Agent and Assignee under Finance Agreement dated as of September 1, 1974 (the "Finance Agreement"), said Bank as so acting being hereinafter called the "Assignee".

WHEREAS, the Vendor, BORG-WARNER EQUITIES CORPORATION, a Delaware corporation ("Vendee") and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Guarantor") have entered into a Conditional Sale Agreement dated as of September 1, 1974 (the "Conditional Sale Agreement"), covering the sale and delivery on the conditions therein set forth, by the Vendor and the purchase by the Vendee of the railroad equipment described in Schedule A to the Conditional Sale Agreement (collectively the "Equipment" and individually an "Item" or "Items of Equipment") and including the unconditional guaranty by the Guarantor of all obligations of the Vendee under the Conditional Sale Agreement.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (the "Assignment"),

### WITNESSETH:

That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Vendor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. *Assignment by Vendor.* The Vendor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Vendor in and to each Item of Equipment when and as delivered and accepted and upon payment by the Assignee to the Vendor of the amount required to be paid under Section 5 hereof and payment by the Vendee of the amount required to be paid under Section 3.3(a) of the Conditional Sale Agreement with respect to such Item;

(b) All the right, title and interest of the Vendor in and to the Conditional Sale Agreement (except the right to deliver the various Items of Equipment and the right to receive the payments specified in subparagraph (a) of Section 3.3 thereof and pursuant to the last sentence of Sections 2.3 and 13.7 thereof and reimbursement for taxes paid or incurred by the Vendor), and in and to any and all amounts which may be or become due or owing to the Vendor under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee or the Guarantor under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) of this paragraph, all of the Vendor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Vendor for or on account of the failure of the Vendee or the Guarantor to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify the

obligations of the Vendor to deliver the various Items of Equipment in accordance with the Conditional Sale Agreement or relieve the Vendee or the Guarantor from their respective obligations to the Vendor under Sections 3.3(a), 7, 11 and 13 of the Conditional Sale Agreement, or from their respective obligations to the Vendor under the Acquisition Agreement referred to in the Conditional Sale Agreement (the "Acquisition Agreement"). In furtherance of the foregoing assignment and transfer, the Vendor hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Vendor to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee and the Guarantor with the terms and agreements on their parts to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. *Covenants and Agreements of Vendor.* The Vendor covenants and agrees that it will deliver the various Items of Equipment to the Vendee, in accordance with the provisions of the Conditional Sale Agreement. The Vendor further covenants and agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each Item of Equipment to the Vendee under the Conditional Sale Agreement it had legal title to such Item and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the right of the manufacturer of the Equipment to receive payment of its invoice price therefor, the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (as defined in the Conditional Sale Agreement); and the Vendor further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to said delivery of such Item by the Vendor to the Vendee; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder and the Guarantor under the Lease.

The Vendor covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Vendor will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any indebtedness or liability at any time owing to the Vendee or the Guarantor by the Vendor unrelated to the Equipment or the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement). The Vendor's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Section 13.4 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Vendee or the Guarantor in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Vendor of the asserted defense, set-off, counterclaim or recoupment and the Assignee's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Vendee or the Guarantor against and only against the Vendor and shall not be enforceable against the Assignee or any party or parties in whom security title to the Equipment or any unit thereof or any of the rights of the Vendor under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments. The Assignee will give notice to the Vendor of any suit, proceeding or action by the Assignee herein described.

The Vendor agrees that any amount payable to it by the Vendee or the Guarantor, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any Item of Equipment.

SECTION 3. *Equipment Markings.* The Vendor will cause to be plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each Item of Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

“This Unit Subject to Equipment Lease and Conditional Sale Agreement Recorded with the I.C.C.”

SECTION 4. *Recordation.* Upon request of the Assignee, its successors and assigns, the Vendor will execute and deliver all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Vendor therein or in the Equipment.

SECTION 5. *Conditions Precedent to Payment by Assignee.* The Assignee, on or before noon on the Closing Date (the “Closing Date”) fixed as provided in Section 3.5 of the Conditional Sale Agreement shall pay to the Vendor at the office of the Assignee at 120 South Sixth Street, Minneapolis, Minnesota 55480 in immediately available funds an amount equal to that portion of the Purchase Price required to be paid pursuant to Section 3.3 of the Conditional Sale Agreement (other than the portion required to be paid pursuant to subparagraph (a) thereof), provided that there shall have been delivered to the Assignee or Messrs. Chapman and Cutler, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Assignee, Messrs. Chapman and Cutler and the Investors:

(a) Bill or Bills of Sale from the manufacturer of the Items of Equipment to the Vendor, transferring to the Vendor title to the Items of Equipment and warranting to the Vendor that at the time of delivery thereof to the Guarantor under the Lease, such manufacturer had legal title to such Items, free of all liens, claims and encumbrances of any nature whatsoever, except only the rights of said manufacturer to receive payment of its invoice price therefor;

(b) Bill or Bills of Sale from the Vendor to the Assignee, transferring to the Assignee security title to the Items of Equipment and warranting to the Assignee and to the Vendee that at the time of delivery thereof to the Vendee under the Conditional Sale Agreement the Vendor had legal title to such Items and good and lawful right to sell such Items, and title to such Items was free of all claims, liens and encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement, the rights of the Guarantor under the Lease, and the right of the manufacturer of the Items of Equipment to receive payment of its invoice price for such Items.

(c) Certificate or Certificates of Acceptance (as provided in Section 1 of the Lease) signed by an inspector or other authorized representative of the Guarantor stating that the Items of Equipment have been inspected and accepted by him on behalf of the Guarantor and further stating that there was plainly, distinctly, permanently and conspicuously marked by a plate or stencil in contrasting color on each side of each of such Items at the time of its acceptance, in letters not less than one inch in height, the following legend:

“This Unit Subject to Equipment Lease and Conditional Sale Agreement Recorded with the I.C.C.”

(d) Invoice from the manufacturer of the Items of Equipment to the Vendor setting forth the price payable by the Vendor for such Items;

(e) Invoice from the Vendor to the Vendee and the Assignee for the Items of Equipment accompanied by or having endorsed thereon a certification by the Guarantor as to the correctness of the prices of such Items as set forth in said invoices;

(f) Opinion of Messrs. Chapman and Cutler, who are acting as special counsel for the Assignee and for the investors (the "Investors") named in the Finance Agreement, dated as of the Closing Date, to the effect that (i) the Acquisition Agreement, the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are valid and binding instruments enforceable in accordance with their respective terms, (ii) this Assignment and, assuming the due authorization, execution and delivery by the Investors of the Finance Agreement, the Finance Agreement have been duly authorized, executed and delivered by the respective parties hereto and are valid and binding instruments enforceable in accordance with their respective terms, (iii) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) security title to the Items of Equipment is validly vested in the Assignee and such Items, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only for the rights of the Vendee under the Conditional Sale Agreement and the rights of the Guarantor under the Lease (which rights are subordinate to the rights of the Assignee under the Conditional Sale Agreement except to the extent provided in Section 9.2 thereof) and the right of the manufacturer of the Items of Equipment to receive payment of its invoice price therefor, which invoice price has been paid to said manufacturer on the date hereof, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment or the Lease, (vi) the Conditional Sale Agreement, this Assignment and the Lease have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America, and (vii) the offering, sale and delivery of the Conditional Sale Agreement and the conditional sale indebtedness payable thereunder under the circumstances contemplated by the Finance Agreement constitute an exempted transaction under the Securities Act of 1933, as amended, which does not require registration thereunder of the Conditional Sale Agreement or said conditional sale indebtedness and under the Trust Indenture Act of 1939 which does not require qualification of an indenture thereunder, and if the Assignee should in the future deem it expedient to sell its interests in said conditional sale indebtedness (which it does not now contemplate or foresee) such sale would be an exempted transaction under the Securities Act of 1933, as amended, providing that the circumstances involved in any such transaction do not constitute the Assignee an "underwriter" of said conditional sale indebtedness within the meaning of said Act, and the transaction is not made through an "underwriter" within the meaning of said Act, and shall state that the opinions referred to in clauses (g), (h), (i) and (j) hereto have been delivered and are satisfactory in scope and content and that in the opinion of such special counsel, the Investors and special counsel are justified in relying thereon.

(g) Opinion of counsel for the Guarantor addressed to the Vendor, the Vendee, the Assignee, the Investors and Messrs. Chapman and Cutler, dated as of such Closing Date, to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (f) above, and stating that (i) the Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Acquisition Agreement, the Conditional Sale Agreement, including the guaranty obligations of the Guarantor therein

provided for, the Lease and the Finance Agreement have each been duly authorized, executed and delivered by the Guarantor and, assuming the due authorization, execution and delivery thereof by each other party thereto, are legal, valid and binding instruments enforceable against the Guarantor, in accordance with their respective terms;

(h) Opinion of counsel for the Vendor, addressed to the Vendee, the Guarantor, the Assignee, the Investors and Messrs. Chapman and Cutler, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (f) above and stating that (i) the Vendor is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Conditional Sale Agreement, this Assignment and the Acquisition Agreement have each been duly authorized, executed and delivered by the Vendor and, assuming the due authorization, execution and delivery thereof by each other party thereto, this Agreement and the Acquisition Agreement are valid instruments binding upon the Vendor and enforceable against the Vendor in accordance with their respective terms;

(i) Opinion of counsel for the Vendee addressed to the Vendor, the Guarantor, the Assignee, the Investors and Messrs. Chapman and Cutler, to the effect that (i) the Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Vendee has full right, power and authority to enter into, execute and deliver the Acquisition Agreement, the Conditional Sale Agreement and the Lease, and to perform each and all of the matters and things provided for in said instruments, and (iii) the Acquisition Agreement, the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming the execution and delivery thereof by each other party thereto, are valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their respective terms;

(j) Opinion of counsel for the manufacturer of the Items of Equipment addressed to the Vendor, to the effect that the Bills of Sale referred to in clause (a) above, have been duly authorized, executed and delivered by said manufacturer and said Bills of Sale are valid and effective to transfer, and do transfer, good title to the Items of Equipment to the Vendor, free and clear of liens, claims and encumbrances of any nature, except only the right of said manufacturer to receive payment of its invoice price for said Items;

(k) Certificate of a Vice President of the Guarantor to the effect that no Event of Default as specified in the Lease or the Conditional Sale Agreement or any event which with the lapse of time and/or notice provided for in the Lease or the Conditional Sale Agreement would constitute such an Event of Default, has occurred and is continuing;

(l) a letter agreement from the manufacturer of the Equipment pursuant to which said manufacturer warrants to the Assignee that the Equipment will be free from defects in material or workmanship under normal use and service and indemnifies the Assignee and the Guarantor against claims or liabilities based on patent infringements, all in form customarily provided by manufacturers of railroad equipment and reasonably satisfactory to the Assignee and the Guarantor and the Investors; and

(m) Unless payment of the amount payable pursuant to subparagraph (a) of Section 3.3 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Vendee, the receipt from the Vendor for such payment.

In giving the opinions specified in the preceding subparagraphs (f), (g), (h) and (i), counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in the preceding subparagraphs (f) and (g), counsel may rely as to the title to the Items of Equipment upon the opinion of counsel for the Vendor of such Items, and in giving the opinion specified in the preceding subparagraph (h), counsel may rely as to the title to the Items of Equipment upon the opinion of counsel for the manufacturer thereof.

The obligation of the Assignee hereunder to make payment for any Items of Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of the funds to be furnished to the Assignee by the Investors on the Closing Date.

The Assignee shall not be obligated to make any of the above mentioned payments at any time while an Event of Default, or any event which with the lapse of time and/or notice provided for in the Conditional Sale Agreement would constitute an Event of Default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Vendor, without recourse to the Assignee, all right, security title and interest of the Assignee in and to the Items of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any Items of Equipment excluded from the Conditional Sale Agreement pursuant to Section 2.3 thereof.

**SECTION 6. *Further Assignments.*** Subject to the terms and provisions of the Finance Agreement, the Assignee may assign in the entirety all of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment each such subsequent or successive assignee shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

**SECTION 7. *Representation of Vendor; Further Assurances.*** The Vendor hereby

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, that (assuming due authorization, execution and delivery by the other parties thereto) it is a valid and existing agreement binding upon the Vendor and the other parties thereto, and that it is now in force without amendment thereto; and

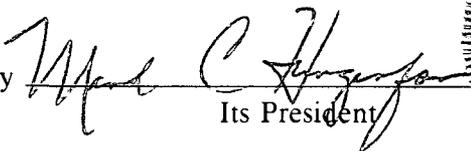
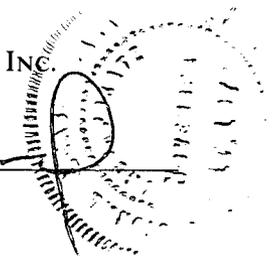
(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, security titles and interests hereby assigned and transferred to the Assignee or intended so to be.

**SECTION 8. *Governing Law.*** The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, except that the rights and obligations of the Vendor hereunder shall be governed by and construed in accordance with the laws of the State of California; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

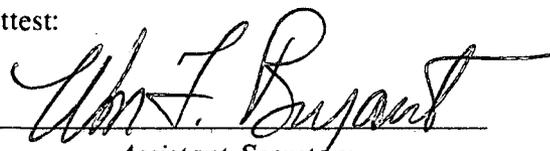
SECTION 9. *Execution in Counterparts.* This Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Vendee and the Guarantor. Although this Assignment is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Vendor and the Assignee have caused these presents to be executed in their respective corporate names by officers or representatives duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the day, month and year first above written.

PROFESSIONAL LEASE MANAGEMENT, INC.

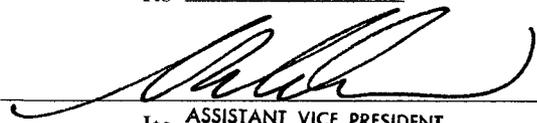
By   
Its President 

Attest:

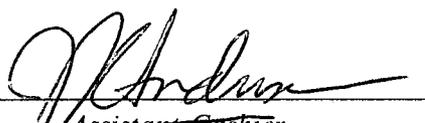
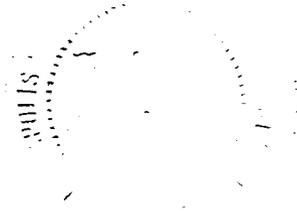
  
Assistant Secretary

FIRST NATIONAL BANK OF MINNEAPOLIS,  
as Agent and Assignee

By   
Its VICE PRESIDENT.

By   
Its ASSISTANT VICE PRESIDENT.

Attest:

  
Assistant Cashier  
Trust Officer 

STATE OF ILLINOIS }  
COUNTY OF COOK } ss.:

On this 26th day of September, 1974, personally appeared Mark Hungerford, to me personally known, who being by me duly sworn, says that he is the President of PROFESSIONAL LEASE MANAGEMENT, 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.

*Barbara Rose Cecnik*  
\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: **NOTARY PUBLIC STATE OF ILLINOIS  
MY COMMISSION EXPIRES AUG 5, 1975  
ISSUED THRU ILLINOIS NOTARY ASSOCIATION**

STATE OF MINNESOTA }  
COUNTY OF HENNEPIN } ss.:

On this 1st day of October, 1974, before me personally appeared F. B. KRAUSE  
and C. M. TILDEN, each to me personally known, who being by me duly  
sworn, say that they are VICE PRESIDENT and ASSISTANT VICE PRESIDENT of FIRST  
NATIONAL BANK OF MINNEAPOLIS, respectively, 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 they acknowledged that  
the execution of the foregoing instrument was the free act and deed of said corporation.

*[Signature]*  
\_\_\_\_\_  
Notary Public

(Seal)

My Commission Expires: **J. A. QUALE  
NOTARY PUBLIC - MINNESOTA  
HENNEPIN COUNTY  
My Commission Expires Jan. 29, 1976**