

CONDITIONAL SALE AGREEMENT

Dated as of September 20, 1973

Between

GUNDERSON, INC.

Seller,

and

BURLINGTON NORTHERN INC.

Buyer,

FOR PURCHASE OF

176 - 100-TON CAPACITY COVERED HOPPER CARS

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ASSIGNMENT AGREEMENT

Dated as of September 20, 1973

Between

GUNDERSON, INC.

and

THE NORTHERN TRUST COMPANY

7217

REGISTRATION NO. \_\_\_\_\_ FILED & RECORDED

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INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of the twentieth day of September, 1973, by and between GUNDERSON, INC., a corporation of the State of *Oregon* (hereinafter called the "Seller" or "Manufacturer"), as party of the first part, and BURLINGTON NORTHERN INC., a corporation of the State of Delaware (hereinafter called the "Buyer"), as party of the second part,

WITNESSETH THAT:

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

1. Construction, Sale and Delivery. The Seller hereby agrees to construct, or cause to be constructed, sell and deliver to the Buyer, and the Buyer hereby agrees to buy from the Seller and to accept delivery of as hereinafter provided, the following described railroad equipment (hereinafter sometimes referred to as "equipment"):

One Hundred Seventy-Six (176) 100-Ton capacity covered hopper cars, bearing Buyer's numbers BN 452424 through 452599, inclusive, at an estimated cost of \$17,811.04 per car.

Each of said cars shall be constructed in accordance with Buyer's Specification No. 1973-E and Seller's letter quotation dated January 30, 1973, together with Seller's Specification No. R-4007-73 drawing SK-384 as modified by Buyer's purchase order BUR-E-OB-2992-3 dated March 21, 1973.

Delivery of said equipment shall be made by the Seller to the Buyer at Seller's plant at Portland, Oregon.

The Seller shall deliver said equipment to the Buyer at said point in first-class operating condition, and complete with all equipment of whatever nature is necessary for the complete and immediate use of same. The Seller warrants that each car will be free from defects in material (except as to articles or materials incorporated therein which have been furnished by the Buyer or by a supplier or suppliers specified by the Buyer) and workmanship under normal use and service; the Seller's obligation with respect to any car to be limited to making good at its plant any part or parts of such car which shall, within one year after the delivery of such car, be returned to the Seller with transportation charges prepaid,

and which the Seller's examination shall disclose to its satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties expressed or implied except for the Seller's obligations under Section 7, and the Seller shall not be liable for indirect or consequential damages resulting from any such defects in material or workmanship.

Upon delivery of each car or group of cars by the Seller to said point, the Buyer shall execute and deliver to the Seller a Certificate of Acceptance stating that each car specified by number in such certificate has been delivered to and accepted on Buyer's behalf, which shall be conclusive evidence that such car conforms to the specifications and is acceptable to the Buyer in all details and is subject to the terms and provisions of this Agreement.

The Seller agrees to deliver said equipment, as hereinabove provided, on or before October 19, 1973, except for delays due to causes beyond Seller's control.

2. Amount and Payment of Purchase Price. - The aggregate purchase price of the aforesaid equipment, together with interest thereon, shall be payable by the Buyer to the Seller at such place as the Seller shall, from time to time designate, in the following manner:

On the 1st day of October, 1974, 1/12th of the unpaid balance of the purchase price of each car accepted under this Agreement, and a like sum on each October 1 thereafter to and including October 1, 1985, at which time the entire amount of the debt remaining shall be paid. Interest shall be payable on the unpaid balance of the purchase price on January 1, April 1, July 1, and October 1, in each year commencing January 1, 1974, (if any such date is not a business day, on the next succeeding business day), interest shall commence from the date of payment to Seller by The Northern Trust Company pursuant to Section 1 of the Assignment Agreement between Seller and The Northern Trust Company of even date herewith, the rate of interest charged shall be the prime commercial rate of interest per annum of The Northern Trust Company, in effect from time to time plus 1/2 of one per cent.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Buyer shall have the right at the time of any installment payment to make prepayments on the balance of the purchase price of the equipment in any multiple of the installment then due, or the entire balance of the purchase price, with interest to the date of such prepayment without premium. Any partial prepayment hereunder shall be applied on the most remote installment or installments then outstanding.

If the Seller shall fail to deliver any one or more of said cars on or before October 19, 1973, whether due to causes beyond Seller's control or otherwise, the parties hereto shall be released from their obligations hereunder with respect to such cars not delivered on or before October 19, 1973; however, the Buyer shall be obligated to accept such cars and pay for same either in cash or, in case the Buyer shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Buyer shall determine.

3. Interest, Taxes and Payments in United States Coin or Currency. All said payments by the Buyer shall, to the extent permitted by applicable law, include interest at the rate of eight (8%) percent per annum on the amount of any overdue payments from the due date of such payment, and shall be free of expenses to the Seller for collection or other charges, and of the amount of any State and/or Federal tax (other than State and/or Federal Income and Excess Profits Taxes) levied or imposed upon this agreement, and/or upon any sale, payment, shipment or delivery under the terms hereof, all of which expenses and taxes the Buyer assumes and agrees to pay in addition to the above-mentioned purchase price of the equipment. The Buyer shall also pay promptly all taxes and assessments which may be imposed upon the equipment, or the earnings arising therefrom, or the operation thereof, or upon the Seller by reason of its ownership thereof, by any jurisdiction in which the equipment is operated, and agrees to keep at all times the equipment free and clear of all taxes, assessments, liens and encumbrances, and covenants that the equipment will at all times be maintained, used and operated under and in compliance with all laws and regulations in any jurisdiction to which the equipment may be subject, but the Buyer shall not be required to pay any such taxes or assessments, so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the equipment.

All payments provided for in this agreement shall be made by the Buyer to the Seller in such coin or currency of the United States of America as, at the time of payment, is legal tender for the payment of public and private debts.

4. Title to the Equipment. The Seller shall, and hereby does, retain the full legal title to and property in all the equipment until the Buyer shall have made all of the payments and shall have kept and performed all of the covenants in this agreement provided to be kept or performed by the Buyer notwithstanding the delivery of the equipment to and the possession and use thereof by the Buyer as herein provided. Any and all replacements of the equipment, and of parts of the equipment, or any of it, and additions thereto, shall constitute accessions to the equipment and shall be subject to all the terms and conditions of this agreement and included in the word "equipment" as used in this agreement. When and only when the Seller has been paid in the aforesaid money the full purchase price for all the equipment, with interest and all other payments as herein provided, and all the Buyer's covenants and conditions herein contained have been performed by the Buyer, title to and property in all of the equipment shall pass to and vest in the Buyer without further transfer or act on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer a bill or bills of sale of all of said equipment, transferring the title to and property in said equipment to the Buyer free and clear of all liens and encumbrances whatsoever, and shall execute for record or filing in public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to all of said equipment under the laws of any jurisdiction; provided, however, that if the Seller shall have assigned its interest in and to said equipment and its rights hereunder pursuant to Section 8 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said equipment and each unit thereof to the Buyer free of any interest of such assignee and of any liens arising through any action of such assignee.

5. Compliance with Laws and Rules. The Buyer shall comply in all respects with all acts of Congress and with the laws of the United States, and of the states and territories into which its operations involving the equipment may extend during the term of this agreement, and with the lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial

body exercising any power or jurisdiction over any of the equipment, and, in the event that the said laws or rules require the alteration of any of the equipment, the Buyer agrees to conform therewith at its expense and to maintain the equipment in proper condition for operation under such laws and rules during the life of this agreement; provided, however, that the Buyer may in good faith contest the application of any such law or rule in any reasonable manner which will not affect the title of the Seller in and to the equipment.

6. Maintenance, Replacements, Marking, Reports and Inspection of the Equipment. At all times as long as this agreement shall be in force, the Buyer shall keep and maintain the equipment in good order and proper repair at its own expense, and cause the same to be kept numbered as aforesaid, and shall place and maintain stencils upon both sides of each unit of the equipment covered by this agreement, with the name of the Seller or of the Seller's assignee, as the case may be, followed by the word "Owner" or other appropriate words designated by the Seller, and the Buyer agrees that it will not place said equipment in operation or exercise any control or dominion over any part thereof until said stencils have been placed on both sides of each unit of said equipment. The Buyer shall replace the equipment, or any of it, at its own cost, if it, or any of it, shall be lost, worn out, irreparably damaged, or destroyed from any cause whatever during the continuance of this agreement, with other equipment of similar type, and of substantially as good material and construction as that lost or destroyed. The Buyer will cause any such new equipment to be marked as above provided and to be numbered with the same number as the equipment so replaced. Title to all such new equipment shall be taken in the name of the Seller (or its assignee as the case may be) and shall be immediately subject to all the terms and conditions of this agreement in all respects as though part of the original equipment delivered hereunder. The Buyer, however, shall have the right, instead of replacing any such destroyed equipment, to pay to the Seller the then unpaid balance properly allocable to such equipment. The Buyer further agrees to maintain and keep said equipment in good order and repair at all times, and shall bear the risk and shall not be released from its obligations hereunder in case of any and all damage, loss or destruction of said property.

If in the opinion of the Buyer any unit of equipment covered by this agreement shall become obsolete or unsuitable for use the Seller shall, upon payment of the unpaid balance of the purchase price allocable to such unit of equipment, execute and deliver to the Buyer a Bill of Sale conveying said unit of equipment free of any interest of the Seller and of liens arising through any action of the Seller.

Any money paid to or received by the Seller pursuant to this Section 6 shall, so long as none of the events of default specified in Section 9 and Section 10 hereof shall have happened and be continuing, be applied, in whole or in part, as the Buyer may direct in a written instrument filed with the Seller, to prepay instalments of the conditional sale indebtedness or to or toward the cost of a unit or units of new or remanufactured standard gauge railroad equipment (other than passenger equipment or work equipment) first put into service no earlier than September 20, 1973, to replace such unit or units that have become lost, worn out, irreparably damaged or obsolete. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments thereafter falling due in the inverse order of their maturities, whether or not such amount shall be sufficient to prepay one or more entire instalment or instalments of the conditional sale indebtedness (after payment by the Buyer of all interest then accrued on each such instalment or portion thereof so prepaid, but without premium). In case of replacement, the amount to be applied by the Seller in respect of any replacement unit shall not exceed the fair value of such unit.

Security title to all such replacement units shall be free and clear of liens and encumbrances. The Buyer shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the security title of the Seller to such replacement units.

Whenever the Buyer shall file with the Seller, pursuant to the foregoing provisions of this Section 6, a written direction to apply money to or toward the cost of a replacement unit of standard gauge railroad equipment, the Buyer shall file therewith executed counterparts of:

(1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Buyer certifying that such replacement unit is standard gauge railroad equipment (other than passenger equipment or work equipment) first put into service no earlier than October 15, 1973 and has been marked and numbered as required by the provisions of this Section 6 and certifying the cost of such replacement unit; and

(2) an opinion of counsel for the Buyer that security title to such replacement unit is vested in the Seller free and clear of all liens, security interests and encumbrances (other than the rights of the Railroad hereunder), and that such replacement unit has come under and become subject to this Agreement.

So long as none of the events of default specified in Section 9 and Section 10 hereof shall have happened and be continuing, any money paid to the Seller pursuant to this Section 6, shall, if the Buyer shall in writing so direct, be invested pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated prime or its equivalent by a national credit agency or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least \$20,000,000, in each case maturing in not more than five years from the date of such investment (such investments being hereinafter called Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Buyer may in writing direct. Any Investments shall be sold by the Seller at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Buyer as hereinabove provided or is otherwise required by the provisions of this Section 6. Any interest received by the Seller on any Investments shall be held by the Seller and applied as herein provided. Upon any sale of any Investments, the proceeds thereof, plus any interest received by the Seller thereon, up to the cost (including accrued interest) thereof, shall be held by the Seller for application pursuant to this Section 6, and any excess shall be paid to the Buyer. If such proceeds plus such interest shall be less than such cost, the Buyer will promptly pay to the Seller an amount equal to such deficiency. The Buyer will pay all expenses incurred by the Seller in connection with the purchase and sale of Investments.

If one of the events of default specified in Section 10 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Seller pursuant to this Section 6 (including for this purpose Investments and interest thereon) shall be applied by the Seller as if such money were money received upon the sale of equipment pursuant to Section 9 hereof.

In order to facilitate the sale or other disposition of any equipment which has become worn out, destroyed, irreparably damaged or obsolete, the Seller shall upon request of the Buyer, after payment by the Seller of a sum equal to the unpaid purchase price of such equipment, execute and deliver to the Buyer's vendee, assignee or nominee, such instrument (without warranties) as may be required to release the security title of the Seller in such equipment, and to release such equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Buyer.

The Buyer further agrees to furnish to the Seller, annually, on or before March 31 of each year, as long as this agreement shall be in force, an accurate inventory of the equipment in actual service, the numbers and the description of such units of equipment as may have been destroyed and replaced, and the then location of said equipment as nearly as may be, commencing in the year 1975.

The Buyer shall promptly and fully inform the Seller with regard to any loss or destruction of any of the equipment, and with regard to any substantial repairs made or being made upon it, or any of it.

In the event of a sale, transfer, or assignment, or successive sales, transfers or assignments, by the Seller of title to any of the equipment and of the Seller's rights hereunder in respect thereof, the Buyer shall, whenever requested by such vendee, transferee or assignee, change the stencils at the expense of the assignor (except that the expense of such change in connection with the first assignment or assignments by the Seller of title to the equipment shall be paid by the Buyer) to indicate the title of such vendee, transferee or assignee to such equipment, and succession to such rights of the Seller hereunder.

Except as above provided, the Buyer will not allow the name of any person, association or corporation to be placed on the equipment or any replacement thereof as a designation that might be interpreted as a claim of ownership thereof; provided, however, that the Buyer may cause the equipment to be lettered with appropriate words or marks for convenience of identification of the Buyer's or its Lessee's interest therein.

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

7. Guaranties and Indemnities. The Buyer shall bear the risk, and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of, any or all of the equipment; provided, however, that the Manufacturer, as defined in Section 2, and any successor or successors to its manufacturing property and business, shall not as to any of the equipment be relieved from its guaranty covering material and workmanship set forth herein.

The Manufacturer will assume all responsibility for and save the Buyer harmless from any and all damages, costs, royalties and claims arising out of charges of infringement of United States patents which may be alleged to cover said cars, articles, or parts thereof, excepting those patents covering the manufacture, sale or use in said cars, articles, or parts thereof, of designs, devices, parts, arrangements, specialties and equipment furnished or specified by the Buyer and as to such excepted United States patents the Buyer shall in like manner assume responsibility and save the Seller and its assignee harmless. Prompt notice in writing shall be given by each party to the other of any claim of patent infringement presented to such party with respect to said cars, articles, or parts thereof, and the party responsible for such infringement as above provided, shall promptly undertake and assume the defense thereof.

The Buyer agrees, after delivery and acceptance of each unit of equipment, to save, indemnify and keep harmless the Seller and its assignee from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of such unit of equipment, or the use or operation thereof. The provisions of this paragraph shall in no way affect the Manufacturer's responsibility under its guaranty hereinbefore contained in this Section 7.

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

8. Assignments by the Seller and the Buyer.  
All or any of the rights of the Seller under this agreement may be assigned by the Seller, and reassigned by any assignee, at any time, from time to time, subject in any case to the obligations of the Seller under this agreement, except Manufacturer's obligation of guaranty and indemnity referred to in Section 7 hereof, its obligation to replace defective workmanship and material, and its obligation to construct and deliver the equipment as hereinbefore provided, it being understood and agreed that no such assignment shall pass to such assignee, or in any way affect or modify, said obligations of the Manufacturer.

Upon any such assignment, the assignor shall give written notice to the Buyer, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire, subject to the provisions of this agreement, all of the Seller's right, title and interest in and to the equipment, or any of it, and such of the Seller's rights and obligations under this agreement, as shall be specified in each such assignment from time to time. From and after the receipt by the Buyer of the notification of any such assignment, all payments thereafter to be made by the Buyer hereunder shall, to the extent so assigned, be made to the assignee.

For every purpose of this agreement, unless the context or some provision hereof requires some other meaning: (a) the term "Seller" whenever used in this agreement means, before any assignment of all or any rights of the Seller hereunder as hereinbefore provided in this Section, Cunderson, Inc., and, after any such assignment, any assignee of all rights hereunder, or, in the event of any assignment of any less than all rights hereunder, both any assignee for the time being of such particular assigned rights as regards such rights, and also his assignor as regards any rights hereunder not assigned, in either case such assignment being by assignment or successive assignments as hereinbefore provided in this section, and any such assignee shall have the same rights and (excepting the Manufacturer's guaranty and indemnity referred to in Section 7, Manufacturer's obligation to replace defective workmanship and material, and the obligation to manufacture and deliver the equipment as aforesaid), shall be subject to the same obligations with respect to the subject matter of the assignment as Seller; and (b) the term "Manufacturer" whenever used in this agreement means, both before and after any such assignment, the party hereto of the first part, and any successor or successors for the time being to its manufacturing property and business, but, as regards any of its or their guaranty and indemnity obligations or obligations to deliver the equipment hereunder or replace any defective workmanship or material therein as aforesaid, does not (and shall not be interpreted to) include or mean any assignee of all or any rights hereunder by assignment or successive assignments as hereinbefore provided in this section.

The Buyer's interest in this agreement shall not be transferred or assigned by the Buyer at any time without the written consent of the Seller or each assignee at such time of any of the Seller's rights, titles and interests hereunder.

9. Defaults and Remedies. (a) In case the Buyer shall make default in the payment of any installment of the purchase price and interest thereon of any delivered equipment as herein provided, for more than twenty (20) days after the same shall become payable, or shall be in default under the provisions of Section 10 hereof; or shall fail or refuse to comply with any other of the terms and covenants in this agreement on its part to be kept and performed, or to make provisions satisfactory to the Seller for such compliance for more than thirty (30) days after notice in writing thereof to the Buyer, then, in any such case (herein sometimes called events of default) at any time thereafter during the continuance of such event of default the Seller may, without further notice or demand except to the extent necessary in order to comply with any mandatory legal requirements then in force and applicable to such action by the Seller, declare the entire purchase price of the equipment, whether the same shall then have fallen due or not, immediately due and payable, without further demand, together with interest at the rate of eight percent (8%) per annum upon any portion thereof overdue, from the date of such default.

The Seller may at its election (and, if before sale or before full performance of this agreement all costs and expenses, including attorneys' fees, of the Seller incidental to any such default and to the enforcement by the Seller of the provisions hereof, and all sums which shall then have become due and payable by the Buyer hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this section as aforesaid, shall have been paid by the Buyer, and all other existing defaults shall have been remedied, or provision therefor satisfactory to the Seller shall have been made, then and in every such case the Seller shall) waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Buyer in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed hereunder, and no such declaration or termination had been made, but no such waiver, rescission or annulment shall limit or affect the Seller's right, upon any other default, to declare said purchase price due as aforesaid, or extend to or affect any other default, or impair any rights or remedies consequent thereon.

(b) If the Buyer shall make default as hereinabove provided, then at any time thereafter during the continuance of such default the Seller may, without further

notice or demand except to the extent necessary in order to comply with any mandatory legal requirements, take or cause to be taken by its agent or agents immediate possession of the equipment, or any of it, and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Buyer any sums theretofore paid, and free from all claims whatsoever except as hereinafter in this section 9 expressly provided, and may remove the same from the use and possession of the Buyer or any person claiming by, through, or under it, and for such purpose may enter upon the premises where the equipment may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available trackage and other facilities or means of the Buyer, without process of law; and the Buyer shall deliver the equipment, or any of it, with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Seller may reasonably designate and for such purpose, move or draw the equipment in the usual manner and at the customary speed, and in case of such retaking or delivery the Seller shall have the right to store the same upon the premises of the Buyer without charge until the Seller shall desire to remove the same therefrom. And it is hereby expressly agreed by the Buyer that performance of this agreement to deliver the equipment as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having jurisdiction in the premises, the Seller shall be entitled to a decree against the Buyer or any other person claiming by, through or under it, requiring specific performance hereof.

(c) If the Buyer shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Seller with or without retaking possession thereof may sell the equipment, or any of it, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Buyer, or any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, all subject to and in compliance with any mandatory legal requirements then in force and applicable to such sale. To the extent permitted by any such legal requirements, any sale or sales hereunder may be held or conducted at St. Paul, Minnesota, at such time or times as the Seller may fix (unless the Seller shall, as so permitted, specify a different place or places, in which case the sale or sales shall be held at such place or places and at such time or times as the Seller may specify), in one lot and as an

entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Seller may determine in compliance with any such legal requirements, provided that the Buyer shall be given written notice of such sale at least ten (10) days prior thereto, by telegram or registered mail addressed to the Buyer at 176 East Fifth Street, St. Paul, Minnesota 55101, or such other notice, if any, as may be necessary to comply with any mandatory legal requirements. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Buyer to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Seller may itself bid for and become the purchaser of the equipment or any of it so offered for sale without accountability to the Buyer (except to the extent of surplus money received as hereinafter provided in the last paragraph of this section 9), and in payment of such purchase price the Seller shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Seller by the Buyer hereunder.

(d) Each and every power or remedy hereby specifically given to the Seller shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy, and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default, or any acquiescence therein.

(e) The Buyer hereby waives, to the fullest extent that they may be waived, all statutory requirements for notice of acceleration, or for notice of the Seller's intention to take possession of the equipment, or for notice of any such sale, as well as all such requirements as to the time, place and terms of any such sale. The Buyer agrees that the rights granted herein shall constitute its only rights in and to said equipment excepting only such additional rights as the Buyer may have under applicable legal provisions, the benefit of which may not be waived.

(f) If the Seller shall exercise any of the powers or remedies conferred upon it hereunder, the Buyer shall have the right after all sums due hereunder to the Seller shall have been received by it in full, including its proper costs and expenses, and attorney's fees, incident to the collection thereof (which costs, expenses and attorney's fees shall constitute an additional obligation of the Buyer hereunder), to require title to the equipment, if not previously sold or otherwise disposed of by the Seller pursuant to the provisions hereof, to be transferred and assigned by the Seller to the Buyer free from any further liability. If after applying all sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this agreement, the Buyer shall pay the amount of such deficit to the Seller. If after applying as aforesaid all sums realized by the Seller there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Buyer.

10. Reorganization Proceedings and Transfers of the Buyer's Interests, a Default. The occurrence of any one or more of the following events, to-wit:

(a) the filing by the Buyer of any petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended; or

(b) the filing by the creditors of the Buyer of any petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, and the court shall approve such petition as properly filed; or

(c) the commencement of any proceedings by or against the Buyer for any relief under any other bankruptcy or insolvency laws, or laws relating to the relief of Debtors, readjustment of indebtedness, reorganizations, arrangements, compositions, or extensions; or

(d) the transfer, or attempted transfer, by the Buyer of its interest in or under this agreement without the consent of the Seller; or

(e) the involuntary transfer of the Buyer's interest in or under this agreement effected either by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise, except as authorized by Section 8 hereof, and except the appointment of a receiver or trustee

and the adoption by the latter, duly authorized by the court of his appointment, of this agreement, and his agreement to be bound by the terms and obligations hereof within thirty (30) days from the date of his appointment;

shall be deemed a breach of this agreement and a default hereunder; whereupon the Seller may elect to declare the entire purchase price immediately due and payable, as hereinbefore provided, and may thereupon forthwith take possession of said equipment or any unit or units thereof, and exercise and enforce any and all other remedies as provided by Section 9 hereof.

11. Applicable State Laws. Any provision of this agreement prohibited by any applicable law of any state or which by any applicable law of any state would convert this agreement into any instrument other than a conditional sale agreement shall, as to such state be ineffective, without modifying the remaining provisions of this agreement. Where, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by the Buyer to the full extent permitted by law.

12. Extension Not a Waiver. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder or of any of its rights and remedies hereunder or otherwise existing.

13. Recording. The Buyer shall cause this agreement and the first assignment to be filed, registered and/or recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Buyer shall from time to time do and perform any other act, and will execute, acknowledge, deliver, file, register and/or record any and all further instruments, required by law or reasonably requested by the Seller or its Assignee for the purpose of protection of the title and rights of the Seller in and to the equipment and its rights under this agreement or for the purpose of carrying out the intention of this agreement.

14. Payment of Expenses. The Buyer shall pay all costs, charges and expenses, except the counsel fees of Seller, incident to the preparation, execution, acknowledgement, filing, registering and/or recording of this agreement and of the first assignment or assignments by the Seller of title to the equipment, and of any instrument supplemental hereto or amendatory hereof.

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

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

17. Buyer's Counterclaims. In the event that this agreement is assigned by the Seller, as provided in Section 8 hereof, the rights of any party who may succeed to the Seller hereunder by any sale, assignment or transfer, or successive sales, assignments or transfers, of title to the equipment or any of it, together with all or any part of the rights of the Seller under this agreement, shall not be subject to any set-off or counterclaim whatsoever arising out of a breach of any obligation in respect of the equipment by Gunderson, Inc. and shall not be subject to any set-off or counterclaim whatsoever by reason of any other indebtedness or liability at any time owing to the Buyer by Gunderson, Inc.; and all such obligations in respect of the equipment and any of it shall be and remain enforceable by the Buyer, its successors and assigns, against and only against Gunderson, Inc., and shall not be enforceable against any party or parties in whom title to the equipment or any of it and all or any part of the rights of the Seller hereunder shall vest by sale, assignment or transfer, or successive sales, assignments or transfers.

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

19. Possession and Use of the Equipment by the Buyer. So long as the Buyer shall not be in default under this agreement, the Buyer shall be entitled to the possession of the equipment and to the use thereof as aforesaid from and after the delivery of the equipment by the Seller to the Buyer upon its lines and upon the lines of any connecting and other carriers in the usual interchange of traffic.

20. Successors and Assigns. Subject to the definitions contained in Section 8 hereof, and to the provisions hereinbefore contained regarding reorganization under Section 77 of the Bankruptcy Act and other proceedings, and regarding transfers and assignments, voluntary and involuntary, by the Buyer, and regarding the continuing obligations of the Seller after its assignment of any or all of the equipment and of any or all of its rights hereunder, this agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto, as well as the said parties themselves.

21. Law Governing. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota.

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

GUNDERSON, INC.,  
Seller,

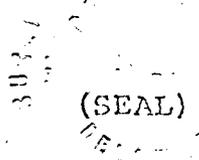
By C. Bruce Ward  
Vice President



Jack J. [Signature]  
Assistant Secretary

BURLINGTON NORTHERN INC.,  
Buyer,

By W.K. Bush  
Vice President



ATTEST:

G.F. [Signature]  
Assistant Secretary

STATE OF OREGON )  
 ) SS  
COUNTY OF MULTNOMAH )

On this *26<sup>th</sup>* day of *October*, 1973, before me personally appeared *C. Bruce Ward*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GUNDERSON, INC., that the seal 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.



*Edmund P. Michael*  
\_\_\_\_\_  
Notary Public, Multnomah County

My Commission Expires Oct. 15, 1976

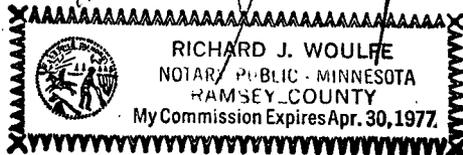
By Commission expires \_\_\_\_\_

STATE OF MINNESOTA )  
 ) SS  
COUNTY OF RAMSEY )

On this *30<sup>th</sup>* day of *October*, 1973, before me personally appeared *W. L. Bush*, to me personally known, who, being by me duly sworn, says that he is a Vice President of BURLINGTON NORTHERN INC., that the seal 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.

(SEAL)

*Richard J. Woulfe*  
\_\_\_\_\_  
Notary Public, Ramsey County



ASSIGNMENT AGREEMENT, dated as of September 20, 1973, between GUNDERSON, INC., a corporation of the State of \_\_\_\_\_ (hereinafter referred to as the "Manufacturer"), party of the first part, and THE NORTHERN TRUST COMPANY, a State Banking Corporation, organized and existing under the laws of the State of Illinois (hereinafter referred to as the "Bank"), party of the second part,

WHEPEAS, the Manufacturer and Burlington Northern Inc. (hereinafter referred to as the "Railroad") have entered into a Conditional Sale Agreement dated as of September 20, 1973, covering the following railroad equipment:

One Hundred Seventy-Six (176) 100-Ton capacity covered hopper cars, bearing Buyer's numbers BN 452424 through 452599, inclusive, at an estimated cost of \$17,811.04 per car.

Each of said cars shall be constructed in accordance with Buyer's Specification No. 1973-E and Seller's letter quotation dated January 30, 1973, together with Seller's Specification No. R-4007-73 drawing SK-384 as modified by Buyer's purchase order BUR-E-OB-2992-3 dated March 21, 1973.

all as more particularly described therein.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, That in consideration of the sum of \$10 in hand paid by the Bank and of other good and valuable consideration, the receipt of which by the Manufacturer from the Bank is hereby acknowledged, and of the mutual covenants herein contained, the parties hereto do hereby covenant and agree as follows, to-wit:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Bank, its successors and assigns, all sums now due, owing, or payable, or which may hereafter be and become due, owing, or payable under or pursuant to said Conditional Sale Agreement as well as all the right, title and interest of the Manufacturer in and to the said equipment and each and every unit thereof, together with all the rights in respect thereof set forth in the above-mentioned Conditional Sale Agreement as applying to the "Seller" thereunder as therein defined, without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with any of the provisions of,

the said Conditional Sale Agreement; provided, further, that this assignment shall not pass, or in any way affect or modify the liability of the Manufacturer, or of any successor or successors to its manufacturing property and business, in respect of its guaranty or indemnity obligations, its obligation to assume all responsibility for costs arising out of patent infringement claims, its obligation to replace defective workmanship or material as covered by warranty, and its obligation to deliver said equipment; it being understood and agreed that notwithstanding this assignment all obligations of the Manufacturer to the Railroad in respect of the said equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer, and any successor or successors to all or substantially all of its property and business, as in said Conditional Sale Agreement provided.

Without hereby limiting the generality of the foregoing assignment and transfer the Manufacturer hereby authorizes and empowers the Bank to sue for, collect, receive and enforce, in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer but at the expense and liability and for the sole benefit of the Bank (against which expense and liability the Bank agrees to hold harmless and to indemnify the Manufacturer), with full power to substitute any one or more persons with like power, or in the name of the Bank, all sums payable and all action to be taken by the Railroad under said Conditional Sale Agreement in respect of the equipment described therein.

In consideration of the aforementioned assignment, the Bank agrees to pay to the Manufacturer, upon receipt by the Bank of the documents in duplicate, hereinafter specified as and when any of the cars are delivered to and accepted by the Railroad under the terms of said Conditional Sale Agreement, the amount of the purchase price not in excess of \$17,811.04, with respect to each such car (Nos. BN 452424 through 452599, inclusive), it being understood and agreed that the Bank shall have no obligation to pay any amounts whatsoever with respect to any cars not delivered and accepted by the Railroad on or before October 19, 1973.

(a) A Bill of Sale from the Manufacturer to the Bank evidencing the transfer to the Bank of title to all cars so delivered and warranting that said title was at the time of delivery free and clear of all liens and encumbrances of any nature except only the rights of the Railroad under said Conditional Sale Agreement;

(b) A Certificate of Acceptance signed by an authorized representative of the Railroad stating that the cars covered by such Certificate have been inspected by him and have on the date of such Certificate been accepted by him on behalf of the Railroad, as conforming in all respects to the requirements and provisions of said Conditional Sale Agreement and further stating that there was plainly, distinctly, permanently and conspicuously placed on each side of each such car at the time of its acceptance a stencil bearing, in letters not less than one inch in height, the following words:

"THE NORTHERN TRUST COMPANY - OWNER"

(c) A duplicate of the Manufacturer's invoice covering each car so accepted.

(d) Opinion of Counsel for Railroad, stating that (i) said Conditional Sale Agreement and this Assignment Agreement have been duly authorized, executed and delivered by the parties and are valid instruments enforceable in accordance with their terms, (ii) the Bank is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment Agreement, (iii) title to the units of equipment is validly vested in the Bank, and such equipment, at the time of delivery to Railroad, was free and clear of all claims, liens and encumbrances of any nature except only the rights of Railroad under the Conditional Sale Agreement, (iv) 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 Agreement, and (v) the Conditional Sale Agreement and this Assignment Agreement 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 recording is necessary for the protection of the rights of the Assignee.

(e) An opinion of counsel for the Manufacturer, dated as of such Closing Date, stating that (i) the Manufacturer 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 Conditional Sale Agreement has been duly authorized, executed and delivered by the Manufacturer and is a legal and valid instrument binding upon the Manufacturer and enforceable against the Manufacturer in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Manufacturer and is a legal and valid instrument binding upon the Manufacturer, (iv) the Assignee is vested with all rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement).

2. The Manufacturer covenants and agrees with the Bank that the Manufacturer is or will, at the time of delivery be the lawful owner of each unit of said equipment and rights under said Conditional Sale Agreement sold, assigned, transferred and set over, or intended to be sold, assigned, transferred and set over, to the Bank by this Agreement; that the same are or will be at the time of delivery thereunder, free from all liens or encumbrances; that the Manufacturer has good and lawful right to sell the same as aforesaid; and that the Manufacturer will warrant and defend the same against the lawful demands of all persons whomsoever based on claims originating prior to the delivery of the said equipment by the Manufacturer to the Railroad; all subject, however, to the provisions of the aforesaid Conditional Sale Agreement, and the rights of the Railroad thereunder.

3. The Manufacturer covenants and agrees with the Bank that, in any suit or action brought by the Bank under said Conditional Sale Agreement for any installment of the purchase price, the Manufacturer will save, indemnify and keep harmless the Bank from and against all expense, loss or damage suffered by reason of any defense, set-off or counterclaim of the Railroad arising out of a breach by the Manufacturer of any of the Manufacturer's obligations respecting any of said equipment under the terms and conditions of said Conditional Sale Agreement; provided, the Manufacturer is given due notice of such defense, set-off or counterclaim, and reasonable opportunity to defend against the same. The Manufacturer agrees to save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgments and costs that may arise from the use of any patented article except with regard to any appliances, devices or materials specified by the Railroad and not manufactured by the Manufacturer.

4. The Manufacturer warrants that at the time of the delivery of said equipment to the Railroad, there will be placed on both sides of each unit of said equipment, stencils, plainly and conspicuously reading as follows:

"THE NORTHERN TRUST COMPANY - OWNER"

5. All rights and obligations hereunder shall be governed by the laws of the State of Minnesota.

6. This Agreement may be simultaneously executed in two (2) or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument, which shall be sufficiently evidenced for all purposes by any such original counterpart.

7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyer thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

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

GUNDERSON, INC

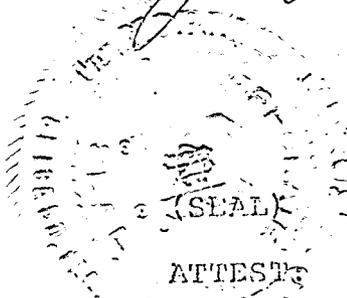
By C. Bruce Ward  
Vice President



[Signature]  
Assistant Secretary

THE NORTHERN TRUST COMPANY

By [Signature]  
Vice President



[Signature]  
Assistant ~~xxxxxx~~ Secretary

STATE OF OREGON )  
 ) SS  
COUNTY OF MULTNOMAH )

On this *26<sup>th</sup>* day of *October*, 1973, before me personally appeared *C. Bruce Ward* to me personally known, who, being by me duly sworn, says that he is a Vice President of GUNDEPSON, INC., that the seal 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.



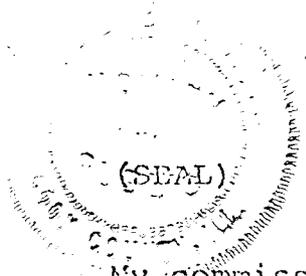
*Edmund Michael*

Notary Public, Multnomah County

My commission expires My Commission Expires Oct. 15, 1976

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this *5<sup>th</sup>* day of *November*, 1973, before me personally appeared *John N. Fitz*, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE NORTHERN TRUST COMPANY, that the seal 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.



*Bill J. Lilj*

Notary Public, Cook County

My commission expires My Commission Expires September 19, 1977