

CHICAGO AND



TRANSPORTATION COMPANY

No. *B-345A072*
Date DEC 11 1978
Fee \$ 50.00

BERNARD J. ALLEN
DIANE KOHLER-RAUSCH
JOAN A. SCHRAMM
ASSISTANT SECRETARIES

December 5, 1978

File No.: A-10790

Washington, D. C.

Interstate Commerce Commission
Washington, D. C. 20423
Attention: Mr. H. Gordon Homme, Secretary

RECORDATION NO. 9894 Filed 1425
DEC 11 1978 - 9 10 AM
INTERSTATE COMMERCE COMMISSION

Gentlemen:

Pursuant to Section 20c of the Interstate Commerce Act, as amended, attached for recordation are 4 counterparts of Guarantee and Security Agreement dated as of 8/15/78.

The names and addresses of the parties to the transaction are as follows:

1. North Western Leasing Company, 400 W. Madison Street, Chicago, Illinois 60606, Owner.
2. Continental Illinois National Bank and Trust Company of Chicago, Assignee, 231 S. LaSalle Street, Chicago, Illinois 60693.

Enclosed is our check for \$50.00 to cover your recording fee. Please return 3 counterparts showing your recordation data.

Very truly yours,

Diane Kohler-Rausch

Diane Kohler-Rausch
Assistant Secretary

DKR:ps
Enclosures

RECEIVED
DEC 11 9 03 AM '78

- | | | |
|------|------------------------------------|-----------------------------|
| FEEL | R. L. Schardt | Arthur Andersen & Co., |
| | R. D. Smith | Attn: Gary Holdren* |
| | F. E. Cunningham, Attn: H. Labno* | Peter D. Horne, Vice Presi- |
| | R. F. Guenther, Attn: J. James* | dent, Continental Illinois |
| | D, E. Stockham, Attn: J. Voldseth* | National Bank & Trust |
| | | Company of Chicago |

* with copy of agreement

Interstate Commerce Commission
Washington, D.C. 20423

12/11/78

OFFICE OF THE SECRETARY

Diane Kohler-Kausch
Chicago & North Western Transp.Co.
400 West Madison Street
Chicago, Illinois 60606

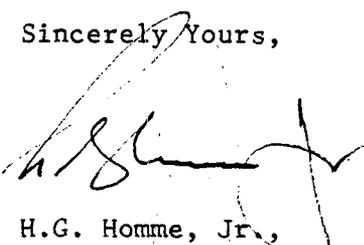
Dear

Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on ^{12/11/78} at 9:10am ' and assigned recordation number(s)

9894

Sincerely Yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

9894
RECORDATION NO. Filed 1425

DEC 11 1978 - 9 10 AM

GUARANTEE AND SECURITY AGREEMENT STATE COMMERCE COMMISSION

AGREEMENT dated as of August 15, 1978 among NORTH WESTERN LEASING COMPANY (the "Owner"), and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (the "Bank").

WHEREAS, the CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY (the "Railroad") has on August 15, 1978, made application to the Bank for a Commercial Letter of Credit to be issued in favor of the Continental Casualty Company as collateral for an appeal bond issued by the Continental Casualty Company as surety on behalf of the Railroad as principal and in favor of Joseph A. Stewart as obligee in the penalty of \$450,000; and

WHEREAS, Owner has agreed with Railroad to guarantee Railroad's obligation under the Commercial Letter of Credit; and

WHEREAS, as security for its guarantee of Railroad's obligations under the Commercial Letter of Credit, Owner has agreed to pledge as collateral for such guarantee a security interest in 3 railroad cabooses and 26 railroad covered hopper cars identified in Schedule A attached hereto (the "Equipment");

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

1. In consideration of the bank's issuance of the Commercial Letter of Credit to the Continental Casualty Company in the amount of \$450,000 as collateral for an appeal bond issued by Continental Casualty Company as surety on behalf of Railroad as principal and in favor of Joseph A. Stewart as obligee in the penalty of \$450,000 and dated on or about the 22nd day of December, 1977, the Owner hereby unconditionally guarantees to the Bank the performance of all obligations by Railroad under the Commercial Letter of Credit and unconditionally guarantees to the Bank that all sums payable by Railroad under such Commercial Letter of Credit will be promptly paid when due in accordance with its provisions, and in case of default by Railroad in any such obligation or payment the Owner hereby punctually agrees to perform or pay the same, irrespective of any enforcement against Railroad of any of the rights of the Bank under the Commercial Letter of Credit.

The Owner hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of this agreement or any other circumstance which might otherwise constitute a legal or equitable discharge

of a surety or guarantor or limit the recourse of the Bank against Railroad. No waiver by the Bank of any of its rights hereunder or of failure to take or delay in taking, any such action shall effect the obligations of the Owner hereunder.

Without limitation to anything otherwise provided in this Section 1, the Owner agrees that the Bank need not, prior to the enforcement of any of its rights against the Owner, take any action to enforce any of its rights or remedies against Railroad or to proceed against, or in any manner realize benefits from the security.

2. To induce the Bank to issue the Commercial Letter of Credit to the Continental Casualty Company, and in consideration therefor, the Owner does hereby grant to the Bank a security interest in the Equipment, which Equipment is owned by the Owner, to secure the performance of the obligations of Railroad under the Commercial Letter of Credit and of the Owner under this Agreement in accordance with the terms thereof and hereof. When and only when Railroad and the Owner shall have performed all of their respective obligations and paid all sums due under the Commercial Letter of Credit and this Agreement, the Bank's security interest in the Equipment shall be deemed terminated and released without further transfer or action on the part of the Bank, except that the Bank, if requested by the Owner, will execute a confirmatory release or other instrument in writing as may be necessary or appropriate to make clear upon the public records the title of the Owner to the Equipment.

3. Maintenance and Repair. The Owner will at all times maintain the Equipment in good order and repair at its expense.

4. Compliance with Laws and Rules. During the terms of this Agreement the Owner will comply in all respects with all applicable laws.

5. Inspections. The Bank shall have the right, by its agents, to inspect the Equipment and the Owner's records with respect thereto.

6. Possession and Use. The Owner, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and the use thereof; and the possession and use of units of rolling stock shall be upon the lines of railroad owned or operated by the Railroad either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any railroad company controlled by or under common control with the Railroad, or over which the Railroad has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic.

7. Prohibition Against Liens. The Owner will satisfy and discharge any and all sums claimed by any party by, through or under the Owner or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the security interest of the Bank thereto; and except that the Owner shall not be required to pay or discharge any such claims so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Bank, adversely affect the security interest or rights of the Bank in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Bank in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

8. Taxes. All payments to be made by the Owner hereunder will be free of expense to the Bank in respect to taxes (other than income taxes, gross receipt taxes, franchise taxes, excess profits taxes and similar taxes), which expense the Owner assumes and agrees to pay on demand, in addition to its obligations hereunder.

9. Owner's Indemnities. The Owner agrees to indemnify and save harmless the Bank from and against all losses, damages, injuries, liabilities, claims and damages whatsoever, regardless of the cause thereof and expenses in connection therewith, including counsel fees, arising out of retention by the Bank of its security interest in the Equipment or out of the use and operation thereof by the Railroad during the period when such security interest remains in the Bank. This covenant of indemnity shall continue in full force and effect notwithstanding the satisfaction of the obligations hereunder and the termination or release of the Bank's security interest, as provided in Section 2 hereof, or the termination of this Agreement in any manner whatsoever.

10. Assignments. The Owner will not sell, assign, transfer, or otherwise dispose of the Equipment or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Bank, which shall not be unreasonably withheld. An assignment or transfer to the Railroad or to the railroad company or other purchaser which shall acquire or lease all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to

the Bank, shall assume and agree to perform each and all of the obligations and covenants of the Owner hereunder, or an assignment by the Owner to one of the Railroad's wholly owned subsidiary companies, shall not be deemed a breach of this covenant, provided that the Owner (with binding effect upon successors of the Owner) agrees not to be released as a primary obligor for the obligations hereunder.

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

Upon any such assignment either the assignor or the assignee shall give written notice to the Owner, 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 all of the Bank's right and security interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner of the notification of any such assignment, all payments thereunder to be made by the Owner hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

11. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to-wit:

- (a) The Owner shall fail to satisfy all or any part of its obligations or to pay any and all sums due hereunder and such failure shall continue for more than five (5) business days after written notice from the Bank, or
- (b) The Owner shall, for more than thirty (30) days after the Bank shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Bank for such compliance; or
- (c) A proceeding in reorganization, bankruptcy or insolvency is instituted by or against the Owner or its property and, unless such proceeding is dismissed within sixty (60) days, stayed or otherwise rendered ineffective, the debtor in

reorganization or any trustee or receiver appointed therein fails to adopt and become bound by the terms, provisions and conditions of this Agreement within sixty (60) days after such appointment or designation; or the Owner makes an assignment for the benefits of its creditors; or

- (d) The Owner shall make or suffer any unauthorized assignment or transfer of the right of possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Bank may, upon written notice to the Owner and upon compliance with any legal requirements then in force and applicable to such action by the Bank, declare the unpaid portion of any sums due hereunder, together with the interest thereon then accrued and unpaid, if any, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such sum and accrued and unpaid interest shall bear interest from the date of such declaration at the rate of three-fourths of one per cent ($3/4$ of 1%) over the interest rate then charged by Bank, to the extent legally enforceable, and the Bank shall thereupon be entitled to recover judgment for the entire amount so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner whenever situated.

12. Remedies. If the Owner shall make default as hereinbefore provided, then at any time after any sum shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Bank, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Bank, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Owner any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 13 expressly provided, and may remove the same from possession and use of the Owner 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 Owner, with or without process of law.

In case the Bank shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Bank, the Owner shall, at

its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be designated by the Bank and shall there deliver the Equipment or cause it to be delivered to the Bank; and, at the option of the Bank, the Bank may keep the equipment on any of the lines of railroad or premises of the Railroad until the Bank shall have leased, sold or otherwise disposed of the same, and for such purpose the Owner agrees to furnish, without charge to the Bank for rent or storage, the necessary facilities at any point or points selected by the Bank reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Bank shall be entitled to a decree against the Owner requiring specific performance hereof.

If the Owner shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after any sum shall have been declared immediately due and payable as hereinbefore provided the Bank (after retaking possession of the Equipment as hereinbefore in this Section 13 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Bank shall deem fit (including, if the Bank so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Owner's rights in the Equipment will thereupon terminate; provided, however, that, if the Owner, within twenty (20) days of receipt of notice of the Bank's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Bank the total unpaid balance due hereunder, together with interest thereon accrued and unpaid and all other payments due by the Owner under this Agreement, then in such event absolute right to the possession of such Equipment shall pass to and vest in the Owner, and the Bank's security interest in the Equipment and its rights hereunder shall terminate; or the Bank, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Owner, or of any other party claiming by, through or under the Owner, at law or in equity, at public or private sale and with or without the advertisement as the Bank may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorney's fees and any other expenses incurred by the Bank in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Bank under the provisions of this Agreement. Written notice of the Bank's election to retain the Equipment for its own use may be given

to the Owner by telegram or registered mail addressed to the Owner as provided in Section 17 hereof, at any time during a period of thirty (30) days after any sum shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Bank shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 12.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Bank 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 Bank may determine in compliance with any such requirements of law, provided that the Owner shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten (10) days prior thereof, by telegram or registered mail addressed to the Owner as provided in Section 17 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Owner to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Bank may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Owner (except to the extent of surplus money received as hereinafter provided in this Section 12), and in payment of the purchase price therefor the Bank shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Bank from the Owner hereunder.

Each and every power and remedy hereby specifically given to the Bank shall be in addition to every other power and 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 as in such order as may be deemed expedient by the Bank. 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 Bank in the exercise of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all sums of money realized by the Bank under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner shall pay the amount of such deficiency to the Bank upon demand, and,

if the Owner shall fail to pay such deficiency, the Bank may bring suit therefor and shall be entitled to recover judgment therefor against the Owner, If, after applying, as aforesaid all sums realized by the Bank, there shall remain a surplus in the possession of the Bank, such surplus shall be paid to the Owner.

The Owner will pay all reasonable expenses, including attorneys' fees, incurred by the Bank in enforcing its remedies under the terms of this Agreement. In the event that the Bank shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Bank may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Bank hereunder in respect to the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

13. 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 security 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 Owner to the full extent permitted by law, to the end that this Agreement shall be deemed to be a security agreement and enforced as such.

14. Extension Not a Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Bank shall impair or affect the Bank's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Owner shall not otherwise alter or affect the Bank's rights or the obligations of the Owner hereunder. The Bank's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Owner or the Bank's rights hereunder with respect to any subsequent payments or default therein.

15. Recording. The Owner will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Owner will from time to time do and perform any other act and will execute, acknowledge, deliver, file

and record any and all further instruments required by law or reasonably requested by the Bank for the purpose of proper protection, to the satisfaction of counsel for the Bank, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner will promptly furnish to the Bank certificates or other evidences of such filing and recording satisfactory to the Bank.

16. Payment of Expenses. The Owner will pay all reasonable costs, charges and expenses, except the counsel fees of the Bank and of assignees of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgement, delivery, filing, registration, or recording of this Agreement, of any instrument supplemental to or amendatory of this Agreement and of any certificate of the payment in full of any sums due hereunder.

17. Notice. Any notice hereunder to the Owner shall be deemed to be properly served if delivered or mailed to the Owner at 400 West Madison Street, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Bank by the Owner. Any notice hereunder to the Bank shall be deemed to be properly served if delivered or mailed to the Bank at 231 South LaSalle Street, Chicago, Illinois 60690, or at such other address as may have been furnished in writing to the Owner by the Bank. Any notice hereunder to any assignee of the Bank or of the Owner shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Owner or the Bank, as the case may be, by such assignee.

18. Section Headings. All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

19. Effect and Modification of Agreement. This Agreement exclusively and completely states the rights of the Bank and the Owner with respect to the Owner's obligation hereunder and the Equipment and supersedes all other agreements, oral or written, with respect to such obligation and Equipment. 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 Bank and the Owner.

20. Execution. This Agreement may be simultaneously 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 contract, which shall be sufficiently

evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date written below, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

21. Term. This Agreement shall remain in effect until the later of (a) August 15, 1979 or (b) the date on which Railroad's obligations under the Commercial Letter of Credit are discharged.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the 29th day of NOVEMBER, 1978.

NORTH WESTERN LEASING COMPANY

By J. Paul Bae
Vice President

(SEAL)

ATTEST:

Diane Keller-Pausch
Assistant Secretary



(SEAL)

ATTEST:

Sudall Hopkins
Commercial Banking Officer

CONTINENTAL ILLINOIS NATIONAL
BANK AND TRUST COMPANY OF CHICAGO

By Robert J. Malone
Vice President

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 29th day of November, 1978, before me personally appeared D. Robert Dallen, to me personally known, who being by me duly sworn, says that he is a Vice President of NORTH WESTERN LEASING 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.

Janet A. Pillow
Notary Public

(NOTARIAL SEAL)
My Commission expires:
August 3, 1982

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 1st day of December, 1978, before me personally appeared PETER D. HORNE, to me personally known, who being by me duly sworn, says that he is a Commercial Banking Officer of the CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, 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.

Lucien Hudson
Notary Public

(NOTARIAL SEAL)
My Commission expires:
October 11, 1982

SCHEDULE A

<u>Quantity</u>	<u>Description</u>	<u>Railroad System No.</u>	<u>Purchase Price</u>
26	Covered Hoppers	CNW 76981	\$ 24,054
		CNW 96757	14,856
		CNW 96758	14,856
		CNW 96759	14,934
		CNW 96761	14,856
		CNW 96762	14,856
		CNW 96763	14,856
		CNW 96764	14,856
		CNW 96765	14,856
		CNW 96767	14,934
		CNW 96768	14,934
		CNW 96769	14,934
		CNW 170000	16,811
		CNW 170001	16,811
		CNW 170002	16,811
		CNW 170003	16,811
		CNW 170004	16,811
		CNW 170005	16,811
		CNW 170006	16,811
		CNW 170008	16,811
		CNW 170009	16,811
		CNW 170010	16,811
		CNW 170011	16,811
		CNW 170012	16,811
		CNW 170013	16,811
		CNW 175002	15,986
3	Cabooses	CNW 11050	15,819
		CNW 11051	16,307
		CNW 11052	16,424
Total			<u>\$470,861</u>