



**BURLINGTON NORTHERN**

LAW DEPARTMENT

12930

RECORDATION NO. \_\_\_\_\_ Filed 1425

176 East Fifth Street  
St. Paul, Minnesota 55101  
Telephone (612) 298-2121

February 9, 1981

FFB 17 1981 - 10 25 AM

No. 1-0484055

Office of the Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

INTERSTATE COMMERCE COMMISSION

Date FEB 17 1981

Fee \$ 50.00

ICC Washington, D. C.

Gentlemen:

There is submitted herewith, for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act, three original counterparts of a Conditional Sale Agreement, dated as of January 2, 1981, between Monumental Life Insurance Company and Volunteer State Life Insurance Company as Vendors and Burlington Northern Inc., the Railroad.

Enclosed is a check payable to the order of the Commission for \$50.00 in payment of the recordation fee.

The names and addresses of the parties to the enclosed Conditional Sale Agreement and the respective capacities of said parties thereunder are as follows:

Vendor: Monumental Life Insurance Company  
Two East Chase Street  
Baltimore, Maryland 21202

Volunteer State Life Insurance Company  
P. O. Box 1369  
Chattanooga, Tennessee 37401

Railroad: Burlington Northern Inc.  
176 East Fifth Street  
St. Paul, Minnesota 55101

A general description of the equipment covered by the enclosed Conditional Sale Agreement is as follows:

79 Boxcars, Seico designed - 77 ton. Road  
Nos. BN 219300 to 219378, both inclusive.

*Handwritten signature: Charles E. ...*

RECEIVED  
FEB 17 10 30 AM '81  
I.C.C.  
FEE OPERATION

Office of the Secretary  
February 9, 1981  
Page 2

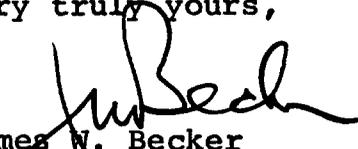
Each unit of equipment described above will have fastened on each side thereof a metal plate bearing the following words, or such words will be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case, in letters not less than one inch in height:

"MONUMENTAL LIFE INSURANCE COMPANY AND VOLUNTEER  
STATE LIFE INSURANCE COMPANY, VENDORS"

Such equipment will also be lettered "Burlington Northern Inc.", "Burlington Northern", "BNI" or "BN", or in some other appropriate manner for the purpose of identification of the leasehold interest of Burlington Northern Inc. therein.

Please return to the individual presenting these documents for recordation, Mrs. Carolyn H. Kunkel, two of the enclosed documents, stamped and bearing notation as provided in Section 57.5(a) of the Commission's regulations.

Very truly yours,

  
James W. Becker  
Assistant General Solicitor

JWB:jmb

Enclosures

SECRET  
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**Interstate Commerce Commission**  
**Washington, D.C. 20423**

2/17/81

**OFFICE OF THE SECRETARY**

**James W. Becker**  
**Assistant General Solicitor**  
**Burlington Northern**  
**176 East Fifth Street**  
**St. Paul, Minnesota 55101**

**Dear Sir:**

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **2/17/81** at **10:35am**, and assigned re-  
recording number (s). **12930**

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

2/6/81  
T146 M1

12930  
RECORDATION NO. \_\_\_\_\_ Filed 1426

THIS INSTRUMENT HAS BEEN EXECUTED  
IN 7 COUNTERPARTS, OF WHICH  
THIS IS COUNTERPART NO 5

FFB 17 1981 -10 25 AM

~~INTERSTATE COMMERCE COMMISSION~~

CONDITIONAL SALE AGREEMENT

Dated as of January 2, 1981,

Between

MONUMENTAL LIFE INSURANCE COMPANY

and

VOLUNTEER STATE LIFE INSURANCE COMPANY.

and

BURLINGTON NORTHERN INC.

9.83% Conditional Sale Indebtedness  
(\*Subject to adjustment upward if additional funds  
are advanced to cover increase in purchase price)

Filed with the Interstate Commerce Commission pursuant to 49 U.S.C.  
§11303 on \_\_\_\_\_, 198\_, at \_\_\_:\_\_\_ a.m., recordation number  
\_\_\_\_\_.

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of January 2, 1981, between MONUMENTAL LIFE INSURANCE COMPANY, a Maryland corporation and VOLUNTEER STATE LIFE INSURANCE COMPANY, a Tennessee corporation, (collectively, the "Vendor", and BURLINGTON NORTHERN INC., a Delaware corporation (the "Railroad").

#### BACKGROUND

Vendor is the owner of certain 50' 70-ton capacity un-equipped boxcars carrying AAR mechanical designation "XM" as more fully described on Exhibit A hereto (the "units", and collectively the "Equipment" except that sub-par boxcars, rejected boxcars and/or removed boxcars as defined below are not included in said definition of "units" after rejection). The boxcars had been the subject of financing under a Conditional Sale Agreement, dated as of July 27, 1978 between Evans Transportation Company, the "builder" or "vendor" thereunder and National Railway Utilization Corporation ("NRUC") which agreement had been assigned to Vendor which had advanced the cost of the Equipment to the builder or vendor thereunder. NRUC is currently in financial difficulty, and has promulgated a "plan" with its creditors. Pursuant to said Plan, NRUC and Vendor have executed an agreement (the "November 28, 1980 Agreement") providing for a return of all of the Equipment to Vendor in full satisfaction of all obligations of NRUC under said Condition Sales Agreement, provided that certain conditions of the November 28, 1980 Agreement are complied with by NRUC. As part of the November 28, 1980 Agreement, NRUC has agreed to cause units to be ready for delivery to Vendor from various points where the units are presently stored and has agreed that each unit at the time of delivery (or if presently in service, at the time of capture) will be in condition so as to be acceptable for "Interchange Service" as provided in Interchange Rules governing hire, use, condition, repair and other matters of the Association of American Railroads (the "AAR") or any other organization, association, agency or governmental authority, which may from time to time be responsible for or have authority to impose such codes, rules, interpretations, laws or orders.

The Vendor and the Railroad, are parties to a certain letter agreement dated November 11, 1980 which, inter alia, contemplated the execution and delivery of this Agreement.

NOW, THEREFORE, in consideration of the mutual premises, covenants and agreements hereinafter set forth, the parties, intending to be legally bound, agree as follow:

ARTICLE 1. Movement for Units. In accordance with instructions received from Railroad, Vendor will instruct NRUC to cause the Equipment described in Exhibit A hereto to be way-billed at the expense of Vendor (F.O.T.) to Railroad's junction points as

are most convenient to the present place of storage of the units (or in the event a unit is presently in service, to the junction nearest to the place of capture of such unit). Vendor will bear the cost of such movement, as aforesaid, as well as the cost of any repairs necessary to comply with requirements of Interchange Service; provided, however, that the Vendor shall have no obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 15 hereof or if any event of default (as described in Article 15 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing.

On delivery of each such unit hereunder at a junction point of Railroad, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

Vendor has agreed that said Equipment shall arrive at said junction on or before June 30, 1981 except that, as to units in service on the date hereof, arrival may be deferred for up to an additional 30 days (as to eight units) if delivery prior to June 30, 1981 is impossible; and as regards delivery of any other unit after June 30, 1981, permission of the Railroad is required.

The foregoing to the contrary notwithstanding, the Vendor's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Vendor's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays of carriers.

ARTICLE 2. Acceptance of Units. Upon arrival at a junction point of the Railroad, the Railroad will cause said unit to be delivered at the Railroad's cost to one of its repair yards and will promptly notify Vendor or its designated agent of the arrival of a unit. Promptly after such notification, the Vendor will cause a designated inspector to meet with an inspector of the Railroad (the parties shall mutually cooperate as to time) to inspect the unit and to determine an agreed upon cost for repairs to the unit, which cost will be based upon AAR scheduled repair shop rates. In the event the inspectors are unable to agree upon said cost, so long as the difference of opinion between the inspectors is a sum of \$500 or less, the estimate of Railroad's inspector shall govern. In the event said difference of opinion of the estimated cost exceeds \$500 and Vendor does not elect to remove the unit from this transaction, the two inspectors shall mutually select a third disinterested and qualified inspector to determine the cost to repair those units upon which the two

inspectors have been unable to agree, and the decision of the disinterested inspector shall be final. If the two inspectors are unable to agree upon the identity of said inspector, then the Chairman of the AAR shall be requested by the parties hereto to designate said inspector, who shall be employed at the joint cost of both the Railroad and the Vendor and who shall immediately be requested to make such inspection.

- (a) Inspection of Units and Right of Rejection. To the extent that the cost to repair a unit is estimated to be in excess of \$7,500, the Railroad shall have the right to reject said unit (hereinafter referred to as "sub-par boxcar") and in such event said unit shall not be part of the Equipment being sold hereunder, the Railroad shall have no obligation to purchase said unit and the Vendor shall have no obligation to advance any part of the purchase price in regard thereto. In the event that the cost of repair of a unit is determined by the inspectors to exceed \$1,500 but be less than \$7,500, then the Railroad in its sole determination has the right to reject up to five units (hereinafter referred to as a "rejected boxcar"), and in such event said rejected boxcar shall be treated the same as sub-par boxcars are treated in the preceding sentence. The Railroad shall exercise its right of rejection by giving written notice thereof to the Vendor: (i) as to a sub-par boxcar, within (5) business days after inspection and (ii) as to rejected boxcars, on or before 5 business days after the seventy-fifth car has been inspected as to the first seventy-five units inspected and within 5 days after each of the last four units has been inspected as to said units. The Railroad shall store units at no charge to the Vendor prior to rejection, and subsequent to rejection shall store any sub-par and/or rejected boxcars as in hereinafter set forth.
- (b) Purchase Price of Units. The purchase price of the Equipment includes \$118,500 (the basic advance which the Railroad shall use for any required expenditures for repair and remarking of

the units (as provided in Article 1 hereof) plus up to another \$39,500 (the "optional advance") which the Railroad may request for repainting of units and/or additional cost of repair and remarking. In the event the agreed cost to repair and remark the Equipment is to exceed the basic advance plus so much of the additional advance as Railroad shall elect to receive, in writing, delivered to the Vendor (which additional advance may be used by the Railroad for the repainting the units or for any other use which the Railroad desires to make of it so long as all necessary repairs, remarking and/or repainting has occurred) (provided that the Railroad must elect to receive so much of the optional advance as is necessary to repair and remark all units except sub-par boxcars and rejected boxcars), then in such event, the Vendor shall either (i) advance the additional funds needed to repair and remark units (as such costs have been determined by inspectors as aforesaid), and in such event the Railroad shall have no obligation to repay such additional funds, or (ii) remove units (the "removed boxcars") from the sale of Equipment to the Railroad hereunder. The Railroad shall be entitled to retain so much of the \$118,500 not required as above stated which shall be part of the purchase price and paid as is more fully set forth in this Agreement.

- (c) Acceptance of Units. If upon inspection, Railroad's inspector shall determine that a unit conforms to Railroad's requirements, then said unit, after remarking, shall immediately be considered to be accepted by the Railroad.

As to any units requiring repair, acceptance by the Railroad shall not occur until a unit shall have been repaired and remarked by the Railroad in its shops. The Railroad agrees that units requiring repair shall be

repaired by it within 45 days after inspection by the Vendor's inspector (so long as in the Railroad's judgment sufficient units are available to allow it to operate its repair facility on an assembly line basis), unless the Railroad or Vendor elects not to repair said unit in accordance with the provision of the next paragraph.

- (d) Time for Repair and Withholding Units for Repair. Either the Railroad or the Vendor may elect that all or certain units need not be repaired until it can be determined if the aggregate cost to repair and remark all units will exceed \$158,000, and either the Vendor or the Railroad may direct that no repair to a unit be made if the agreed upon cost to repair exceeds \$4,500, and in such event such unit or units need not be repaired until it is determined that the total cost to repair and remark all units shall not exceed \$158,000. In the event it is determined such cost of repair will exceed \$158,000 for all units remaining after the Railroad has designated box-cars to be removed as sub-par or rejected as aforesaid, the Vendor shall have 30 days after such determination as to cost to either agree to advance such extra cost which it shall not recover from the Railroad or to remove a sufficient number of units from the purchase and sale hereunder so that the total cost of repair and remarking the balance of the units remaining shall not exceed the aggregate of the basic and option advances after giving effect to such removed boxcars. The Vendor shall have the option to designate which units are to be removed, except for units already remarked and accepted by Railroad.

After all sub-par, rejected and removed boxcars have been designated, the Railroad agrees that all units shall be repaired and remarked within 45 days of the last such designation (so long as in the Railroad's judgment sufficient units are available to allow it to

operate its repair facility on an assembly line basis). In making such determinations, the Railroad and the Vendor both agree to act as expeditiously as possible.

- (e) Certificates of Acceptance. As to each unit accepted by the Railroad's inspector without repair requirements and as to each unit repaired by the Railroad, such inspector or an authorized representative of the Railroad shall execute and deliver to the Vendor a certificate of acceptance in the form attached hereto as Exhibit "B" (the "Certificate of Acceptance") stating that such unit or units have been accepted on behalf of the Railroad and are marked in accordance with Article 6 hereof.
- (f) Use of Units prior to Issuance of Certificates of Acceptance for all Units. Provided all documents to be recorded in accordance with the requirements of Article 18 have been recorded and the opinion of counsel has been furnished as to such units, the Railroad may use such units notwithstanding the fact that Certificates of Acceptance has not been issued for the remaining units.
- (g) Storage of Sub-par, Rejected and Removed Boxcars. The Railroad agrees that it shall store upon its tracks up to ten boxcars which have been designated as sub-par, rejected and/or removed boxcars for a period not to exceed one year from the last date that a unit has been so designated. The Vendor agrees to maintain insurance upon any sub-par, rejected or removed boxcars and to pay the Railroad its customary storage charge for each such boxcar during the storage period and to remove all such boxcars, and any boxcars not entitled to storage at its expense to consignees and destinations off Railroad's lines, as Vendor shall select, promptly upon demand of the Railroad as soon as the time for permitted storage has lapsed.

ARTICLE 3. Purchase Price and Payment. The aggregate purchase price to be paid for the Equipment which includes an advance for repairs and remarking of the Equipment is \$2,330,500 to which shall be added the optional advance to the extent advanced as aforesaid.

Upon final determination of the number of boxcars to be removed as sub-par, rejected and/or removed boxcars, the Vendor shall deliver an invoice (the "Invoice") to the Railroad for the Equipment in an aggregate amount of \$2,330,500 increased by so much of the optional advance as is advanced by the Vendor, and decreased by \$28,000 for each sub-par boxcar, rejected boxcar and removed boxcar, which total amount is hereinafter referred to as the "Invoiced Purchase Price". (The value of each unit shall be determined by the dividing the Invoiced Purchase Price by the total number of units remaining with the Railroad.) The Railroad acknowledges itself to be indebted to the Vendor in an amount equal to the Invoiced Purchase Price and agrees to pay in cash to the Vendor at such place as the Vendor may designate, the Invoiced Purchase Price, in sixty equal consecutive quarter-annual installments each in an amount of \$\_\_\_\_\_. The Railroad shall commence to pay said installments three months after the date of the Invoice to the Railroad, and thereafter installments shall be paid each third month on the same day of the month the first payment is due (unless said day is Saturday, Sunday or other day on which banking institutions in St. Louis, Missouri, St. Paul, Minn., or Baltimore, Maryland are authorized or obligated to remain closed, in which event the day for that period shall be the next day banking institutions are open for business in either St. Louis, Missouri, St. Paul, Minn., or Baltimore, Maryland) (each such date is called an "Installment Payment Date").

In the event that the Vendor and the Railroad agree that the Railroad may use units for which Certificates of Acceptance are delivered (provided the same are marked as is provided in Article 6 hereof and all necessary recordation has occurred as is provided in Article 18 hereof) before all units are accepted and Certificates of Acceptance are delivered to the Vendor, then for purposes hereof in order to determine the amount the Railroad

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\* This amount shall be computed on the date the invoice is delivered and shall be calculated as follows: \$2,330,500 decreased by \$28,000 for each sub-par boxcar, rejected boxcar and removed boxcar together with interest at a per annum rate of 9.83% shall be payable on an arrearages basis in sixty equal quarter-annual installments and the amount of the optional advance so advanced shall be payable together with interest at 12% per annum, in sixty equal quarter-annual installments on an arrearages basis, and said payments shall be combined.

shall pay to the Vendor during the period of such interim use, an amount equal to \$8.19 on a per diem basis shall be paid for the use of each unit determined by multiplying the per diem charge by the number of days elapsed from the date the car was accepted to the date of the Invoice, which payment shall be made at the time the Invoice is delivered to the Railroad as aforesaid. Vendor agrees to advance to the Railroad an aggregate of \$12,000 at such time as repairs to a group of ten cars are completed and accepted (and payments shall be advanced within seven business days thereafter), and shall make like advances for each group of ten cars so repaired, and will advance up to an aggregate of \$6,500 additional upon repair of an aggregate of sixty-five cars. The balance of advances shall be made at the time of delivery of the Invoice.

Payments shall be made by the Railroad to the Vendor at the following address, unless notified by the Vendor of another address, in federal or other immediately available funds by wire transfer to the following accounts and in the following percentages:

As to Monumental Life Insurance Company - 67.98%  
Mercantile Safe-Deposit and Trust Company  
Account No. 08525-1  
Attention: Carl Presser  
Charles and Chase Streets  
Baltimore, MD 21202

As to Volunteer State Life Insurance Company - 32.02%  
American National Bank and Trust Company  
Account No. 000-031-5  
P. O. Box 1638  
Chattanooga, TN 37401  
Attention: Mr. Triplett

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 1% in excess of the interest rate payable in the second paragraph of this Article 3, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. The Railroad shall have the privilege of prepaying on any regular installment payment date all or any part the indebtedness due hereunder prior to the date it becomes

due without premium or penalty, so long as the amount paid, if less than all, is in multiples of installments due hereunder. Payments so received shall be applied to the principal indebtedness in inverse order of maturity.

ARTICLE 4. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than Vendor's net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being called "impositions"), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and promptly notifies the Vendor to such effect, and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 5. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained,, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof 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 term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, shall absolute right to the possession of, title to and property in the Equipment pass to and vest in the Railroad and such shall then occur without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at the time, at the Railroad's expense will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all claims, liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary 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 release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad and delivery by the Railroad of such forms for execution as shall be reasonably acceptable to the Vendor.

ARTICLE 6. Marking of the Equipment. Upon receipt of each unit at the Railroad's shop, the Railroad will cause each unit of the Equipment accepted by it to be kept numbered with an identifying number designated by the Railroad as set forth in Schedule A hereto which shall be amended from time to time as boxcars are received by the Railroad pursuant to Article 1 hereof, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit and each sub-par, rejected and removed boxcar, in letters not less than one inch in height, the name of the Vendor followed by the word "Owner", or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement.

The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon (and until the recording required by Article 18 below has been effected) and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad, its successors or assigns, or its affiliates.

ARTICLE 7. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When a unit has suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made pursuant to this Article 7), the Railroad, on the next succeeding Installment Payment Date after it has knowledge of such event, shall pay to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 7 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay installments of Invoiced Purchase Price. In case any money is applied pursuant to this Article 7 to prepay indebtedness, it shall be so applied in inverse order of priority to the installments due hereunder.

The Casualty Value of each unit suffering a Casualty Occurrence shall be deemed to be that portion of the original Invoiced Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under

this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Invoiced Purchase Price in respect of Equipment made pursuant to Article 3 hereof prior to such Casualty occurrence shall be deemed to be a payment on each unit in like proportion as the original Invoiced Purchase Price of such unit bears to the aggregate original Invoiced Purchase Price of the Equipment.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Invoiced Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it. The policy shall be endorsed with a lender's loss payee clause in favor of Vendor.

ARTICLE 8. Maintenance; Compliance with Laws and Rules.  
The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense, normal wear and tear excepted.

During the term of this Agreement, the Railroad will at all times comply and will cause all users of the Equipment to comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend and with all lawful rules of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, in each case to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own

expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement. The Railroad shall give prompt notice to the Vendor of its decision to contest the same.

ARTICLE 9. Reports and Inspections. On or before April 30 in each year, commencing with the year 1982, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. Possession and Use. Subject to all of the terms and conditions of this Agreement, the Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment to the Railroad; provided, however, that the Railroad shall not be entitled to assign or permit the assignment of any unit to service involving the regular operation and maintenance thereof outside of the United States of America.

ARTICLE 11. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior or junior to the Vendor's interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or

rights of the Vendor in or to the Equipment or otherwise under this Agreement. The Railroad shall give prompt notice to the Vendor of its decision to contest the same. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement, and shall be repaid immediately by Railroad, said unpaid balance to accrue interest thereon at a rate equal to the prime rate charged by the Chemical Bank N.A., New York, New York on a daily moving basis.

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, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 12. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses arising out of or as the result of entering into or the performance of this Agreement, the retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Railroad will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 13. Disclaimer of Warranties and Representations by Vendor. The Railroad acknowledges that it is expert in matters involving boxcars and that Vendor is an insurance company which acquired title to the boxcars as a result of financial troubles of NRUC. The Railroad has had the opportunity to and made complete examination of the Equipment. The Vendor has not made and does not make, AND RAILROAD in consideration of Vendor's representation hereinafter made and the premises herein contained, WAIVES ANY RIGHT TO CLAIM ANY WARRANTY EXPRESSED OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE UNITS AND THE VENDOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO ANY UNIT.

The Vendor shall have no responsibility or liability to the Railroad or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the operation, servicing, maintenance, repair, improvement or replacement of any units. The Railroad's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Railroad and the Vendor that the units described therein are in all the foregoing respects satisfactory to the Railroad, and the Railroad will not assert any claim of any nature whatsoever against the Vendor based on any of the foregoing matters.

Vendor represents to the Railroad that at the time of delivery of the units that it will have good title thereto and will have good and lawful right to sell the Equipment pursuant to this Agreement free and clear of all liens and encumbrances, except as provided hereunder. Vendor agrees that upon written notice from the Railroad of the assertion of a claim or encumbrance arising (or alleged to have arisen) during the period prior to delivery of the units or, if subsequent to such time, such encumbrance shall have arisen solely by reason of an act of Vendor or any prior conditional sale Vendee that it will: (a) defend the title to the units against such assertions; indemnify and hold harmless the Railroad in respect thereto; and pay any such claims found to be valid by a court of competent jurisdiction or (b) Vendor at its option, evidenced by written notice to the Railroad may elect to re-acquire the Equipment or any units thereof subject to such claim. The Railroad shall return such units as are subject to such claim to the Vendor if Vendor so request and in the event units are being returned, there shall be deducted from the Invoiced Purchase Price an amount for each unit equal to the Casualty Value thereof as of such date, and Vendor will return to the Railroad any principal payments previously made, in which event as to the Equipment or the units being acquired, as may be the case, the Railroad will have no further obligation to make any additional payment on account of the Invoiced Purchase Price thereof, except that the Railroad shall pay and discharge any liens or encumbrances created after delivery of each such unit to the Railroad arising through the Railroad or as a result of operation of the cars after acceptance by the Railroad. Vendor, as regards each and every unit which it re-acquires pursuant to this provision will hold the Railroad harmless in respect of any such claim or encumbrance.

ARTICLE 14. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this

Agreement or, except as provided in Article 10 hereof, transfer the right to possession of any unit without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all of the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time, provided that such assignment shall not result in an interlocking relationship in violation of Section 10 of the Clayton Act.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, 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 the assignor's right, title and interest in and to the Equipment and this Agreement, 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 Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such transfer or assignment, or successive transfers or assignments by the Vendor, of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such transferee or assignee, change the markings to be placed on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such markings to be such as shall be specified by such transferee or assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

- (a) the Railroad shall fail to pay in full any indebtedness in respect of the Invoiced Purchase Price of the Equipment and interest due thereon or any

other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

- (b) the Railroad shall, for more than 30 days after the Vendor 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 Vendor for such compliance; or
- (c) a petition for reorganization under Title 11 of the United States Code ("Title 11"), as now constituted or as hereinafter amended, shall be filed by or against the Railroad or an order shall be entered granting relief to the Railroad pursuant to Title 11 and, unless such petition or order shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or custodians or receivers appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration (or if appropriate in such case, as "super-priority" administration expenses if others are afforded such status) and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed, and otherwise in accordance with the provisions of 11 U.S.C. §1168, or any successor provision, as the same may hereafter be amended; or

- (d) any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers or custodians appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;
- (e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;
- (f) any representation or warranty of Railroad shall be untrue in any material respect;
- (g) the Railroad shall be unable to pay its debts as they become due; or

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory non-waiverable legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amount remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Invoiced Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall immediately notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory non-waiverable legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) 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 Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish at the risk of Railroad, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to furnish the necessary facilities and permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. During any storage period, the Railroad will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair. This agreement to deliver the Equipment and furnish facilities 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 Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the

Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor 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 Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 20 hereof.

If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sales price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor 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 and in such order as may be deemed expedient by the Vendor. 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 Vendor 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 an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 3 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such

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

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

The foregoing provisions of this Article 16 are subject in all respects to all mandatory non-waiverable legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption and appraisal.

ARTICLE 18. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto and/or appropriate financing statements to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in the immediately preceding sentence of this Article 18. The Railroad will furnish to the Vendor prior to the first use and operation of each and every unit by the Railroad if such use is to occur prior to the time of delivery of the opinion referred to in Article 19 below, an opinion of counsel for the

Railroad to the effect that all necessary filings and recordings have been made to protect the interest of the Vendor in and to the Equipment.

The Railroad will promptly furnish to the Vendor certificates or other evidence satisfactory to the Vendor of such filing, registering, depositing and recording.

ARTICLE 19. Representations and Warranties; Opinion of Counsel. The Railroad represents and warrants (for the benefit of the Vendor) that:

- (i) the Railroad is a corporation legally incorporated, validly existing and in good standing under the laws of its state of incorporation with adequate corporate power to enter into this Agreement;
- (ii) this Agreement has been duly authorized, executed and delivered by the Railroad and constitutes valid, legal and binding agreement of the Railroad, enforceable in accordance with its respective terms;
- (iii) this Agreement has been duly filed and recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303 and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in the Canada Gazette) pursuant to Section 86 of the Railway Act of Canada and such filing and recordation will protect the Vendor's interests in and to the units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government or province is necessary in order to protect the interests of the Vendor in and to the units in any state of the United States of America or in the District of Columbia or in the Dominion of Canada;
- (iv) no approval is required from any public regulatory body with respect to the entering into or performance of this Agreement;

- (v) the entering into and performance of this Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Railroad is a party or by which it may be bound;
- (vi) no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Railroad, now attaches or hereafter will attach to the units or in any manner affects or will affect adversely the Vendor's right, title and interest therein;
- (vii) at the time of execution of the Agreement, no material adverse change has occurred in the condition, financial or otherwise, of the Railroad since December 31, 1979; and
- (viii) there being no action, proceeding or investigation pending or threatened against the Railroad which would materially, adversely affect its ability to carry out the terms of this Agreement.

At the time of the delivery of the Invoice the Railroad will deliver its certificate attesting to the correctness of the foregoing, executed by its authorized officers (whose authority shall be duly evidenced by appropriate resolutions, including but not limited to an incumbency certificate and by an opinion of counsel to the Railroad addressed to the Vendor to the effect set forth in clauses (i), (ii), (iii), (iv), (v), (vi) and (vii) in which opinion such counsel may assume that the laws of Minnesota are the same as the laws of Pennsylvania. In the event that any of such representations and warranties are not true and correct at any time prior to the delivery of the Invoice, the Vendor shall have the option to refuse to deliver any units to the Railroad.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

- (a) to the Railroad, at 176 East 5th Street, St. Paul, Minnesota 55101;

(b) to Monumental Life Insurance Company  
Two East Chase Street  
Baltimore, MD 21202  
Attention: Law Department

(Notices with respect to payments should be addressed to the attention of Treasurer)

to Volunteer State Life Insurance Company  
c/o Monumental Life Insurance Company  
Two East Chase Street  
Baltimore, MD 21202  
Attention: Law Department

(Notices with respect to payments should be addressed to: Volunteer State Life Insurance Company  
P. O. Box 1369  
Chattanooga, TN 37401  
Attention: Controller)

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 21. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect the construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the 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 Vendor and the Railroad.

ARTICLE 22. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof or any financing statement or other similar instrument shall be filed, recorded or deposited, or in which any unit of the

Equipment shall be located, and any rights arising out of the marking of the units of Equipment as provided in Article 6 hereof.

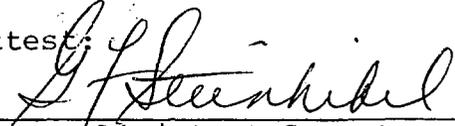
ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are the last date stated in the acknowledgments hereto annexed.

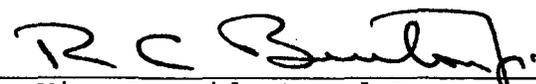
ARTICLE 24. Vendor's Discretionary Decisions. Monumental Life Insurance Company ("Monumental") and Volunteer State Life Insurance Company ("Volunteer") agree that although both Monumental and Volunteer are jointly named "Vendor", nevertheless, all discretionary and ministerial decisions or actions required or permitted to be made or undertaken hereunder (including but not limited to the right to give all notices and to enforce any right) shall be made or undertaken by Monumental on behalf of both Monumental and Volunteer and such decision or action so made or undertaken by Monumental shall be binding upon both Monumental and Volunteer. In the event Monumental transfers or assigns all its interest in this Agreement, then in such event, the then holder of the greatest amount in principal balance due hereunder shall succeed to the position hereinabove granted to Monumental.

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

[Corporate Seal]

BURLINGTON NORTHERN INC.

Attest:  
  
Assistant Secretary

By   
Vice President and Treasurer

[Corporate Seal]

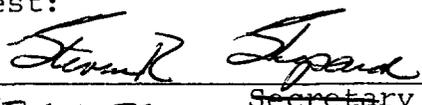
MONUMENTAL LIFE INSURANCE COMPANY

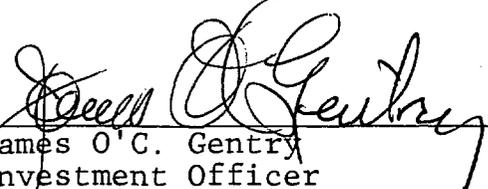
Attest:  
  
Secretary

By   
James O'C. Gentry  
Vice President

[Corporate Seal]

VOLUNTEER STATE LIFE INSURANCE COMPANY

Attest:  
  
Secretary  
ABST INVESTMENT OFFICER

By   
James O'C. Gentry  
Investment Officer

1/15/81  
T146a M11

State of MARYLAND :  
City of BALTIMORE : SS  
~~County~~ :

On this the 9th day of February, 1981, before me, a Notary Public of the State and County aforesaid, personally appeared James O'C. Gentry, who acknowledged himself to be the Vice President of MONUMENTAL LIFE INSURANCE COMPANY, a corporation, and that he, as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.

In witness whereof I hereunto set my hand and notarial seal.

NOTARY PUBLIC

  
\_\_\_\_\_  
Anne H. Rakas

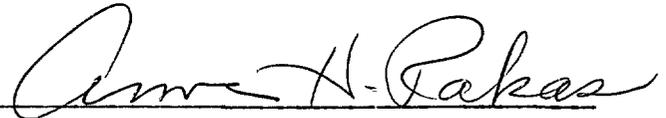
My Commission Expires: July 1, 1982

State of MARYLAND :  
City : SS  
~~County~~ of BALTIMORE :

On this the 9th day of February, 19 81, before me, a Notary Public of the State and County aforesaid, personally appeared James O'C. Gentry, who acknowledged himself to be the Investment Officer of VOLUNTEER STATE LIFE INSURANCE COMPANY, a corporation, and that he, as such Investment Officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Investment Officer.

In witness whereof I hereunto set my hand and notarial seal.

NOTARY PUBLIC

  
\_\_\_\_\_  
Anne H. Rakas

My Commission Expires: July 1, 1982





EXHIBIT "A"

SPECIFICATIONS AND CAR NOS. INCLUDED IN 79-CAR LOT

SIECO-designed 77-ton, 50'6" rigid underframe boxcar equipped with 10-foot sliding doors. Car is unequipped with interior loader fixtures and carries AAR Mechanical Designation of "XM".

(Southern Iron & Equipment Company Spec. No. 77-130.)

Car numbers and dates built are as follows:

Burlington Northern  
Car Numbers:

MNJ 120935 - 120940)  
NSL 155056 - 155099) - Built July, 1978

BN 219300-219378

NSL 155220 - 155238)  
NSL 155240 - 155249) - Built October, 1978.

EXHIBIT "B"

CERTIFICATE OF ACCEPTANCE

TO: Monumental Life Insurance Company, and  
Volunteer State Life Insurance Company  
("Vendor")

I, duly appointed inspector and authorized representative of Burlington Northern Inc. ("Railroad") for the purpose of the Conditional Sale Agreement as of January 2, 1981, between the Vendor and the Railroad do hereby certify that I have inspected, received, approved and accepted delivery, on behalf of the Railroad under said Conditional Sale Agreement of the following Units of Equipment:

TYPE OF EQUIPMENT:

PLACE ACCEPTED:

DATE ACCEPTED:

NUMBER OF UNITS:

NUMBERED:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications applicable thereto and to all applicable United States Department of Transportation, the Interstate Commerce Commission, or other United States agency governmental requirements and specifications, and to the requirements for Interchange Service of the Association of American Railroads.

Dated: \_\_\_\_\_, 1981

\_\_\_\_\_  
Inspector and Authorized Representative  
of Burlington Northern Inc.