



BURLINGTON NORTHERN

LAW DEPARTMENT

1-057A020

No.

Date FEB 26 1981

Fee \$ 50.00

ICC Washington, D. C.

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

February 24, 1981

RECORDATION NO. 12984 Filed 1425

FEB 26 1981 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

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

Gentlemen:

There is submitted herewith, for filing with the Commission pursuant to Section 11303 of the Interstate Commerce Act, two original counterparts and one certified true copy of an Agreement to Acquire and Lease dated as of February 6, 1981, between The Liberty National Leasing Company, as Owner, 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 Agreement to Acquire and Lease and the respective capacities of said parties thereunder are as follows:

Owner: Liberty National Leasing Company
P. O. Box 32500
Louisville, Kentucky 40232

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

A general description of the equipment covered by the enclosed Agreement to Acquire and Lease is attached as Exhibit A.

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:

"LEASED FROM THE LIBERTY NATIONAL LEASING COMPANY,
LOUISVILLE, KENTUCKY, PURSUANT TO AN AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION."

RECEIVED
FEB 26 9 59 AM '81
I.C.C.
FEE OPERATION BR.

Copy kept - St. Paul, Minn.

Interstate Commerce Commission
February 24, 1981
Page 2

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

SCHEDULE A

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Unit Base Price (000's)</u>	<u>Vendor/Builder</u>	<u>Identification Numbers</u>
4	Kershaw Ballast Regulator, Model 26-2-1 and Brooms, Model 27-7-21	66	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
3	Kershaw Tie Gang Regulator, Model 24-1	36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Tamper Model EAJDG Electromatic Tamper Mark I	129	Tamper Cannon Rail Group 2401 Edmund Road West Columbia, SC 29169	
4	Nordberg Model BT Dunrite Gaging Machine	39	Russell Railway Supply Room 540 4940 Viking Drive Minneapolis, MN 55435	
6	RMC Zapper Hydraulic Spiker, Model "SZ"	70	Portec/RMC Division c/o D. J. Hogan Company 327 South LaSalle Street Chicago, IL 60601	
1	Caterpillar Model 950 Wheel Loader	99	Lincoln Equipment Company 930 West 101 Street Lincoln, Nebraska 68501	
1	Pettibone Speed Swing, Model 441-B	93	Pettibone Corporation 5700 Sears Tower Chicago, IL 60606	
2	Galion Crane, Model 150-F	120	T. C. Johnson Company P. O. Box 433 521 East Washington Street Chagrin Falls, OH 44022	
1	R.T.W. TH-2170-A Tie Handler W/TR - 1000 Single Tie Head	29	Railway Track Work Company 2381 Philmont Avenue Bethayres, PA 19006	

1. 246/5/E/FE02

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Unit Base Price (000's)</u>	<u>Vendor/Builder</u>	<u>Identification Numbers</u>
2	Kershaw Bridge Crane, Model 11-3	\$ 36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Model FGIX-40 FW Transport Low Boy Trailer	39	Borchert-Ingersoll, Inc. P. O. Box 4303 3275 Dodd Road St. Paul, MN 55164	
3	Massey Ferguson Industrial Tractor, Model MF-30B	20	L. Z. Manufacturing Company, Inc. 1881 Rice Street St. Paul, MN 55113	
2	Ford Diesel Tractor, Model 4415	20	Midway Tractor & Equipment Company 3326 University Avenue S. E. Minneapolis, MN 55414	
1	Hyster Challenger Lift Truck, Model H300B	64	Hyster Company 9892 - 40th Avenue South P. O. Box 18168 Columbia Station Seattle, WA 98118	
1	Paxton-Mitchell Super Snooper Bridge Inspection Crane	162	Hayden-Murphy 9301 E. Bloomington Frwy. P. O. Box 20127 Minneapolis, MN 55420	
1	Ingersoll Rand Air Compressor, Model XD-600	29	Air Power Equipment 2631 University Avenue St. Paul, MN 55114	

Interstate Commerce Commission
Washington, D.C. 20423

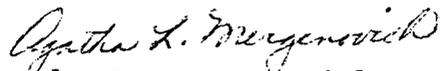
OFFICE OF THE SECRETARY

James W. Becker
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 2/26/81 at 10:05AM, and assigned re-
recording number(s). 12964

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 12964 1425

FEB 26 1981 - 10 05 AM

INTERSTATE COMMERCE COMMISSION

STATE OF MINNESOTA)
) SS
COUNTY OF RAMSEY)

I have compared the attached copy of the Agreement to Acquire and Lease to the original thereof and do hereby certify that the attached copy is true and correct in all respects.

Dorothy Tjornhom

■~~~~~■
DOROTHY TJORNHOM
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept. 3, 1986
■~~~~~■

AGREEMENT TO ACQUIRE AND LEASE

Dated as of February 6, 1981

between

BURLINGTON NORTHERN INC.,

as Lessee

and

THE LIBERTY NATIONAL LEASING COMPANY,

as Owner.

Covering Maintenance of Way Equipment

TABLE OF CONTENTS
AGREEMENT TO ACQUIRE AND LEASE

	<u>Page</u>
RECITALS	
SECTION 1. Purchase of Equipment by the Owner	1
SECTION 2. Representations of the Lessee	2
SECTION 3. Representations of the Owner	4
SECTION 4. Conditions to Acceptance of Equipment	4
SECTION 5. Closing Requirements	6
SECTION 6. Exclusion of Equipment	7
SECTION 7. Information to be Furnished by Lessee	7
SECTION 8. Payment of Costs	8
SECTION 9. Notices	8
SECTION 10. Severability	9
SECTION 11. Governing Law	9
SECTION 12. Execution in Counterparts	10
TESTIMONIUM	10
SIGNATURES	10
ACKNOWLEDGEMENTS	11
SCHEDULE A--Description of Equipment	
EXHIBIT A--Indemnity Agreement	
EXHIBIT B--Lease of Railroad Equipment	

AGREEMENT TO ACQUIRE AND LEASE

AGREEMENT TO ACQUIRE AND LEASE dated as of February 6, 1981 between BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the "Lessee") and THE LIBERTY NATIONAL LEASING COMPANY, a Kentucky corporation (hereinafter called the "Owner").

RECITALS

The Owner proposes to purchase from the builders and vendors listed in Schedule A hereto (collectively referred to as the "Builders") units of maintenance of way equipment (the "Equipment") described in Schedule A, which the Lessee has ordered from the Builders pursuant to the Lessee's purchase orders (the "Purchase Orders"). The indemnity agreement dated as of the date hereof and attached hereto as Exhibit A (the "Indemnity Agreement") provides that Lessee has assigned to the Owner its right to purchase the Equipment from the related Builder (such provision is hereinafter referred to as the "Purchase Order Assignment").

In order to assure the Owner that it has all right, title and interest in and to the Equipment, as well as to provide certain other indemnities in connection with the various Purchase Orders, the Owner and Lessee will enter into the Indemnity Agreement.

The Lessee will lease from the Owner all units of Equipment delivered and accepted under each Purchase Order, pursuant to the Lease of Maintenance of Way Equipment dated as of the date hereof (hereinafter called the "Lease") substantially in the form attached hereto as Exhibit B.

NOW, THEREFORE, in consideration of the agreements and the covenants hereafter contained, the parties hereto hereby agree as follows:

SECTION 1. Purchase of Equipment by the Owner.
The Owner shall provide funds on each Closing Date (as hereinafter defined) sufficient to make payments to the related Builder for Equipment delivered by such Builder on or before such Date, and the Owner shall purchase, as hereinafter provided, units of Equipment having an aggregate Purchase Price not exceeding \$2,347,000 (the "Maximum Purchase Price"). The Equipment will be settled for in approximately fifteen groups, each of which may contain Units delivered and accepted from one or more Builders. (Each such settlement

date will hereafter be referred to as a "Closing Date"). Each such Closing Date shall be designated in the notice of the Lessee delivered pursuant to Section 5(a) hereof. The Owner will be under no obligation to purchase any units of Equipment unless such units are delivered and accepted by the Lessee under the Lease on or prior to July 1, 1981 (the "Cut-Off Date").

SECTION 2. Representations of the Lessee. The Lessee represents and warrants to the Owner as follows:

(a) The Lessee is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business and in good standing in such other jurisdictions in which its business and activities require such qualification and in which failure to so qualify would materially and adversely affect its condition, financial or otherwise.

(b) The Lessee has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Lease, the Indemnity Agreement and the Purchase Order Assignment and to fulfill and comply with the terms, conditions and provisions hereof and thereof; this Agreement, the Lease, the Indemnity Agreement and the Purchase Order Assignment have been duly authorized and have been duly executed and delivered and, assuming due authorization, execution and delivery thereof by the other party or parties thereto, constitute valid, legal and binding agreements and instruments of the Lessee enforceable against the Lessee in accordance with their terms.

(c) There are no actions, suits or proceedings (whether or not purportedly on behalf of the Lessee) pending or threatened against or affecting the Lessee or any property rights of the Lessee at law or in equity or before any commission or other administrative agency which, if decided adversely, would materially and adversely affect the condition, financial or otherwise, of the Lessee; and the Lessee is not in default with respect to any order or decree of any court or governmental commission, agency or instrumentality which default would materially and adversely affect the condition, financial or otherwise, of the Lessee.

(d) The Lessee is not a party to any agreement or instrument or subject to any charter or other restriction materially and adversely affecting the business, present or proposed, of the Lessee or the operations, property or assets or condition, financial or otherwise, of the Lessee.

(e) Neither the execution and delivery by the Lessee of this Agreement, the Lease, the Indemnity Agreement or the Purchase Order Assignment, nor the consummation of the transactions herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the certificate of incorporation of the By-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Lessee is a party or by which either it or its property may be bound, or constitute (with the giving of notice or the lapse of time or both) a default thereunder or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon the property of the Lessee or upon the Equipment pursuant to the terms of any such agreement or instrument (other than any encumbrance on the leasehold estate of the Lessee which is subordinate to the interest of the Owner) or violate any applicable law or governmental rule or regulation.

(f) No authorization, consent or approval is required from any court or other governmental or public body or authority in connection with the execution, delivery and performance by the Lessee of this Agreement, the Lease, the Indemnity Agreement or the Purchase Order Assignment.

(g) The Lessee has furnished to the Owner the balance sheets of the Lessee as of December 31, 1979, and related consolidated statements of income and retained earnings for the twelve-month period then ended. Such financial statements are in accordance with the books and records of the Lessee and have been prepared in accordance with generally accepted accounting principles applied in each case on a consistent basis throughout the period covered by such financial statements (subject to any exceptions stated therein and in the notes thereto). Such financial statements present fairly the financial condition of

the Lessee at such dates and the results of its operations and changes in its financial position for such periods. From the date of the last such balance sheet up to and including the date of this Agreement, there has not been any material adverse change in the assets, liabilities, business or condition (financial or otherwise) of the Lessee.

(h) Lessee has not and will not directly or indirectly create, incur, assume or suffer to exist any liens, mortgages, encumbrances, pledges, charges, easements or security interests of any kind on or with respect to the Equipment except for the interest of the Owner, other than any encumbrance on the leasehold estate of the Lessee which is subject and subordinate to the interest of the Owner.

SECTION 3. Representations of the Owner.

The Owner represents and warrants to the Lessee as follows:

(a) The Owner is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Kentucky.

(b) The Owner has full power, authority and legal right to carry on its business as now conducted and is duly authorized and empowered to execute and deliver this Agreement, the Indemnity Agreement and the Lease and to fulfill and comply with the terms, conditions and provisions hereof and thereof.

(c) Each of this Agreement, the Indemnity Agreement and the Lease has been duly authorized, and has been or will be, on or before the Closing Date duly executed and delivered by the Owner and, assuming due authorization, execution and delivery thereof by the other party thereto, is a legal, valid and binding agreement or instrument of the Owner.

SECTION 4. Conditions to Acceptance of Equipment.

The obligation of the Owner to purchase the Equipment from a Builder under the related Purchase Order Assignment shall be subject to the terms and conditions of the Purchase Order Assignment, and to the receipt by the Owner, on or prior to the date of delivery of the first unit of Equipment and acceptance thereof under the Lease (such date being hereinafter called a "Delivery Date"), of the following documents, dated on or not more than 5 days prior to the Delivery Date,

in form and substance satisfactory to the Owner and its counsel:

(a) an opinion of James W. Becker, Esq., counsel for the Lessee to the effect set forth in subparagraphs (a), (b), (d), (e) and (f) of Section 2 hereof, and to the knowledge of such counsel, in subparagraph (c) of Section 2 hereof, and to the further effect that:

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 interest therein of the Lessee now attaches or hereafter will attach to the Equipment or in any manner affects or will affect adversely the right, title and interest of the Owner therein;

(b) a certificate of an officer of the Lessee to the effect that:

(i) the Lessee is not in default under this Agreement and the Lease; and

(ii) the representations and warranties made in this Agreement by the Lessee are true and correct as of the Delivery Date as if made on and as of such date;

(iii) there has been no material adverse change in the Lessee's financial condition from that shown in its financial statements as of December 31, 1979;

(c) an opinion of an independent expert or an opinion of an officer of Lessee (which must be dated on or not more than five days prior to the Delivery Date) satisfactory to the Owner to the effect that the estimated fair market value and useful life of the units of Equipment at the end of the term of the Lease meet the tests set forth in Section 4(1)(C) of Revenue Procedure 75-21 and that the units of Equipment are expected to be useful and usable by the Owner at the end of the term of the Lease for purposes other than the continued leasing or transfer to the Lessee or any member of the Lessee Group (as defined in Revenue Procedure 75-21);

(d) all documents which the Owner may reasonably request in connection with the transactions contemplated by this Agreement including certified copies of all corporate proceedings and orders of regulatory agencies in connection therewith, in form and substance satisfactory to the Owner; and

(f) a certificate of insurance which complies with the requirements of §7 of the Lease.

In giving the opinions specified in subparagraphs (a), (b) and (c) of this Section 4, counsel may qualify his opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

As a further condition of such obligation of the Owner, this Agreement and the Lease shall have been duly filed and recorded pursuant to 49 U.S.C. §11303 and the Uniform Commercial Code; and all taxes, fees and other charges in connection with the execution, delivery, recording, publication and said filing shall have been duly paid in full by the Lessee (or reimbursed by the Lessee to the Owner, if paid by the Owner).

SECTION 5. Closing Requirements. On each Closing Date the Owner shall pay to the Builder an amount equal to the Purchase Price (as such term is defined in §3 of the Lease) of the Equipment as shown on the invoice therefor then being settled for, provided that the conditions specified in Section 4 hereof shall have been satisfied. In addition, there shall have been delivered to the Owner on or prior to each Closing Date the following documents, in form and substance satisfactory to it:

(a) written notice (which may be waived by the Owner) from the Lessee delivered to the Owner at least five Business Days (as such term is defined in the Lease) prior to the related Closing Date containing the Purchase Price of all units of Equipment to be purchased by the Owner on such Closing Date;

(b) a bill or bills of sale from the Builder to the Owner conforming to the requirements of paragraph 2 of Section 2 of the Indemnity Agreement;

(c) a Certificate or Certificates of Acceptance with respect to the units of Equipment as contemplated by §2 of the Lease; and

(d) an invoice addressed to the Owner from the respective Builder for the units of Equipment accompanied by or having endorsed thereon a certification by the Owner and the Lessee as to their approval thereof that the invoice reflects an amount in respect of the unit base price as specified in Schedule A hereto.

SECTION 6. Exclusion of Equipment. Any equipment not delivered pursuant to this Agreement and any equipment not delivered and accepted hereunder and under the Lease on or before the Cut-Off Date shall be excluded from this Agreement. If on any Closing Date, the aggregate Purchase Price of Equipment for which payment has theretofore been and is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price, such units of Equipment shall be excluded from this Agreement and the Lease, and the Owner shall be under no further obligation or liability in respect of the units so excluded (such Equipment plus any Equipment not accepted hereunder and under the Lease being hereinafter referred to as "Excluded Equipment"). If any Equipment shall be excluded herefrom and from the Lease pursuant to the preceding sentences, the Owner and the Lessee shall execute an agreement supplemental hereto limiting this Agreement and the Lease to the Equipment not so excluded. In the event of any such exclusion of any unit of equipment pursuant to the foregoing provisions of this Section 6, or in the event the Owner is relieved of its obligation hereunder to accept or pay for any or all units of equipment in accordance with the terms and conditions hereof for any reason whatsoever, the Lessee will be obligated to accept all such units completed and delivered by the Builder and to pay the full Purchase Price therefor when due, all in accordance with the terms of the Purchase Order with the Builder relating to such equipment, and the Owner will reassign, transfer and set over unto the Lessee, all the right, title and interest in the Owner in and to the units of equipment so excluded and the Purchase Order, and the Owner shall have no further obligation or liability in respect of the units so excluded. Without limiting the generality of the foregoing, Lessee hereby agrees to indemnify Owner and hold Owner harmless from all liability to the Builder with respect to Excluded Equipment.

SECTION 7. Information to be Furnished by Lessee. The Lessee will deliver to the Owner (i) as soon as

available, and in any event within 120 days after the end of each fiscal year of the Lessee, a certificate signed by the President, any Vice President or the Treasurer of the Lessee stating that a review of the activities of the Lessee during such year has been made under such officer's supervision with a view to determining whether the Lessee has kept, observed, performed and fulfilled all of its obligations under this Agreement and the Lease and that to the best of such officer's knowledge the Lessee during such year has kept, observed, performed and fulfilled each and every covenant, obligation and condition contained herein and therein, or if an Event of Default (as defined in the Lease) shall exist, or if an event has occurred and is continuing which with the giving of notice or the passage of time or both would constitute an Event of Default, specifying such Event of Default and all such events and the nature and status thereof and what action the Lessee proposes to take to remedy the same; (ii) as soon as available, and in any event within 75 days after the end of the first, second and third quarterly accounting periods in each fiscal year of the Lessee, copies of the balance sheet of the Lessee as of the end of such accounting period and copies of the related statements of income and retained earnings of the Lessee for the portion of its fiscal year ended with the last day of such quarterly accounting period, all in reasonable detail, certified by the Treasurer or other financial officer of the Lessee, and stating in comparative form the figures for the corresponding date and period in the previous fiscal year; (iii) as soon as available, and in any event within 120 days after the end of each fiscal year, copies of the balance sheet of the Lessee as at the end of such fiscal year, and of the statements of income and retained earnings of the Lessee for such fiscal year, all in reasonable detail and stating in comparative form the consolidated figures as of the end of and for the previous fiscal year; and (iv) as soon as available, a copy of each Annual Report to the Securities and Exchange Commission and any other periodic reports with the Securities and Exchange Commission made from time to time, which are required to be filed by the Lessee, unless previously supplied pursuant to clause (iii).

SECTION 8. Payment of Costs. The Owner agrees to pay or cause to be paid all costs and expenses incurred by the Owner in connection with the preparation, execution and delivery of this Agreement and the Lease, or any amendments, supplements or waivers with respect hereto or thereto.

SECTION 9. Notices. Any notice required or permitted to be given by any party hereto to any other party or

parties shall be deemed to have been given when delivered or deposited in the United States mails, certified or registered, first-class postage prepaid, addressed as follows:

if to the Owner at P. O. Box 32500
Louisville, Kentucky 40232
Attention of President

if to the Lessee, at 176 East Fifth Street
St. Paul, Minnesota 55101
Attention of Vice President
and Treasurer

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above for such party.

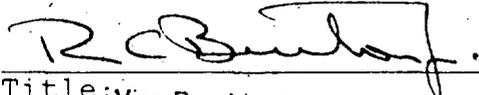
SECTION 10. Severability. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

SECTION 11. Governing Law. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota.

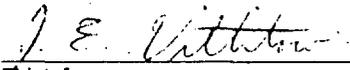
SECTION 12. Execution in Counterparts. This Agreement may be executed in any number of counterparts, all of which together shall constitute a single instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized officers or other persons, as of the date first above written.

BURLINGTON NORTHERN INC. ("Lessee")

By 
Title: Vice President
and Treasurer

THE LIBERTY NATIONAL LEASING COMPANY
("Owner")

By 
Title: Vice-President

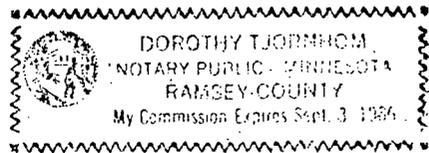
ACKNOWLEDGEMENTS

State of Minnesota)
County of Ramsey) ss.:

On this 12th day of February, 1981, before me personally appeared R. E. Burton, to me personally known, who, being by me duly sworn, says that he is the V.P. Treasurer of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dorothy Joernhom
Notary Public

[Notarial Seal]



STATE OF)
COUNTY OF) ss.:

On this 11th day of February, 1981, before me personally appeared J. E. Wittetous to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE LIBERTY NATIONAL LEASING COMPANY that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Barbara Cox
Notary Public

[Notarial Seal]

Commission Exp. 11-9-81

SCHEDULE A

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Unit Base Price (000's)</u>	<u>Vendor/Builder</u>	<u>Identification Numbers</u>
4	Kershaw Ballast Regulator, Model 26-2-1 and Brooms, Model 27-7-21	66	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
3	Kershaw Tie Gang Regulator, Model 24-1	36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Tamper Model EAJDC Electromatic Tamper Mark I	129	Tamper Cannon Rail Group 2401 Edmund Road West Columbia, SC 29169	
4	Nordberg Model BT Dunrite Gaging Machine	39	Russell Railway Supply Room 540 4940 Viking Drive Minneapolis, MN 55435	
6	RMC Zapper Hydraulic Spiker, Model H3Z	70	Portec/RMC Division c/o D. J. Hogan Company 327 South LaSalle Street Chicago, IL 60601	
1	Caterpillar Model 950 Wheel Loader	99	Lincoln Equipment Company 930 West 10 th Street Lincoln, Nebraska 68501	
1	Pettibone Speed Swing, Model 441-B	93	Pettibone Corporation 5700 Sears Tower Chicago, IL 60606	
2	Galion Crane, Model 150-F	120	T. C. Johnson Company P. O. Box 433 521 East Washington Street Chagrin Falls, OH 44022	
1	R.T.W. TH-2170-A Tie Handler W/TR - 1000 Single Tie Head	29	Railway Track Work Company 2381 Philmont Avenue Bethayres, PA 19006	

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Unit Base Price (000's)</u>	<u>Vendor/Builder</u>	<u>Identification Numbers</u>
2	Kershaw Bridge Crane, Model 11-3	\$ 36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Model FGIX-40 FW Transport Low Boy Trailer	39	Borchert-Ingersoll, Inc. P. O. Box 4303 3275 Dodd Road St. Paul, MN 55164	
3	Massey Ferguson Industrial Tractor, Model MF-30B	20	L. Z. Manufacturing Company, Inc. 1881 Rice Street St. Paul, MN 55113	
2	Ford Diesel Tractor, Model 445	20	Midway Tractor & Equipment Company 3326 University Avenue S. E. Minneapolis, MN 55414	
1	Hyster Challenger Lift Truck, Model H300B	64	Hyster Company 9892 - 40th Avenue South P. O. Box 18168 Columbia Station Seattle, WA 98118	
1	Paxton-Mitchell Super Snooper Bridge Inspection Crane	162	Hayden-Murphy 9301 E. Bloomington Frwy. P. O. Box 20127 Minneapolis, MN 55420	
1	Ingersoll Rand Air Compressor, Model XD-600	29	Air Power Equipment 2631 University Avenue St. Paul, MN 55114	

Exhibit A to
Agreement to Acquire and Lease

INDEMNITY AGREEMENT

Dated as of February 6, 1981

between

BURLINGTON NORTHERN INC.,

as Lessee

and

THE LIBERTY NATIONAL LEASING COMPANY,

as Owner

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT dated as of February 6, 1981 by and between THE LIBERTY NATIONAL LEASING COMPANY, a Kentucky corporation (the "Owner") and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee").

RECITALS:

The Owner and the Lessee have entered into an Agreement to Acquire and Lease dated as of February 6, 1981 (the "Agreement to Acquire and Lease") pursuant to which the Lessee has agreed to lease from the Owner the Maintenance of Way Equipment referred to therein. (All terms used herein which are not otherwise defined shall have the meaning ascribed to them in the Agreement to Acquire and Lease.)

The Lessee desires to lease rather than purchase the Equipment and the Owner is willing to acquire certain of the Lessee's rights and interests under the Purchase Orders as the same relate to the Equipment and to purchase the Equipment, all on the terms and conditions hereinafter set forth and in the Agreement to Acquire and Lease.

In order to induce the Owner to enter into the Lease, the Lessee has agreed to indemnify the Owner in the manner and to the extent hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Owner and the Lessee hereby agree as follows:

SECTION 1. ASSIGNMENT.

(a) The Lessee does hereby assign and set over to the Owner all of the Lessee's rights and interest in and to the Equipment and the Purchase Orders as the same relate to the Equipment including, without limitation, in such assignment, (i) the right to purchase each Unit of Equipment pursuant to the related Purchase Order, and the right to take title to such Unit of Equipment and to be named the purchaser in the bill of sale for such Unit of Equipment, (ii) all claims for damages in respect of each Unit of Equipment purchase by the Owner arising as a result of any default by the Builder thereof under the related Purchase Order, including, without limitation, all warranty and indemnity provisions

contained in such Purchase Order, and all claims arising thereunder, in respect of such Unit of Equipment, and (iii) any and all rights of the Lessee to compel performance of the terms of such Purchase Order. Nothing in this Agreement shall be construed to modify or amend any of the terms of any Purchase Order or any indemnity extended by the Lessee thereunder or hereunder, it being understood that the Lessee shall be and remain solely liable for any such indemnity.

(b) If and so long as no Event of Default or event which, with notice and the lapse of time or both, would constitute an Event of Default under the Lease has occurred and is continuing, the Lessee shall be, and is hereby authorized on behalf of the Owner in the name of the Lessee to exercise all rights and powers of the purchaser under all Purchase Orders with respect to the Equipment except that (i) the Lessee may not exercise the right to purchase and take title to any Equipment except when permitted by the Agreement to Acquire and Lease and the Exhibits thereto; and (ii) the Lessee may not enter into any change, order or other amendment or modification to any Purchase Order without the written consent or countersignature of the Owner if such change order, amendment or modification would result in any rescission, cancellation or termination of such Purchase Order.

(c) If and so long as no Event of Default or event which, with notice of lapse of time or both would constitute an Event of Default under the Lease has occurred and is continuing, if Lessee incurs expense or is otherwise damaged with respect to any Equipment and there is a subsequent payment by the Builder (by way of warranty, indemnity or otherwise) with respect to the reason Lessee incurred such expense or suffered such damage, then Lessee shall be entitled to receive from such payment (as reimbursement for its damages) an amount not exceeding the amount of damages incurred by Lessee with respect thereto.

SECTION 2. CONTINUING LIABILITY OF LESSEE; INDEMNIFICATION BY LESSEE.

It is expressly agreed that, anything herein contained to the contrary notwithstanding: (a) the Lessee shall at all times remain liable to the Builders to perform all of the duties and obligations of the purchaser under the Purchase Orders to the same extent as if this Agreement had not been executed, (b) the execution of this Agreement shall not modify any contractual rights of the Builders under the Purchase Orders and the liabilities of the Builders under

the Purchase Orders shall be to the same extent and continue as if this Agreement had not been executed, (c) the exercise by the Owner of any of the rights assigned hereunder shall not release the Lessee from any of its duties or obligations to the Builders under the Purchase Orders except to the extent that such exercise by the Owner shall constitute performance of such duties and obligations, and (d) the Owner shall not have any obligation or liability under the Purchase Orders by reasons of, or arising out of, this instrument or be obligated to perform any of the obligations or duties of the Lessee under the Purchase Orders or to make any payment (other than under the terms and conditions set forth in the Agreement to Acquire and Lease) or to make any inquiry of the sufficiency of or authorization for any payment received by any of them or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

Lessee agrees to have each Builder execute and deliver to the Owner a bill or bills of sale, satisfactory to the Owner, transferring to the Owner all right, title and interest of the Builder to each Unit of Equipment delivered by the Builder, warranting to the Owner that, at the time of delivery of such Unit, the Builder had legal title thereto and good and lawful right to sell the same and that such Units were new and unused and free of all claims, liens, security interests and other encumbrances of any nature (except only the rights created under the Lease); and covenanting to defend the title to such Units against demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Builder to the Owner.

Lessee agrees to indemnify and save the Owner harmless against any liability, loss, damage, claim or expense which arises out of any defect in title to any Unit of Equipment, except defects in title arising by, through or under Owner and covenants and warrants to the Owner that it will, at its cost and expense, defend the Owner's right, title and interest in each Unit of Equipment (subject to defects in title arising by, through or under Owner) against the demands of all persons originating during the term of this Lease. Lessee further agrees to indemnify the Owner for any loss, liability, damage, claim or expense arising out of (1) the failure of any Builder to be duly incorporated and validly existing under the laws of the State of its incorporation; (2) the non-compliance of any documents executed and delivered by any Builder with its charter or by-laws; and (3) any suit, action or proceeding in which any Builder raises the defense of ultra vires. Furthermore,

Lessee agrees to indemnify and save the Owner harmless from any liability, loss, damage, claim and expense which arises out of any claims for patent infringement relative to the Equipment.

The indemnities provided herein are in addition to, and not in lieu of, any other indemnities of the Lessee contained in the Lease.

SECTION 3. FURTHER ASSURANCE.

The Lessee agrees that at any time and from time to time, upon the written request of the Owner, the Lessee will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Owner may reasonably request in order to obtain the full benefits of the assignment in this Indemnity Agreement and of the rights and powers herein granted.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF LESSEE.

The Lessee does hereby represent and warrant that:

(a) The Lessee is not in default in any material respect under any Purchase Order and each Purchase Order is, or will be, upon acceptance thereof by the related Builder, enforceable against the Lessee in accordance with its terms.

(b) The Lessee has not assigned or pledged, and hereby covenants that it will not assign or pledge so long as this instrument shall remain in effect, the whole or any part of the rights hereby assigned to anyone other than the Owner.

SECTION 5. NOTICES.

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when personally delivered to the intended recipient or deposited in the United States mails, certified first class, postage prepaid, addressed to the intended recipient as provided in the Lease.

SECTION 6. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the Owner and the Lessee and their respective permitted successors and assigns.

SECTION 7. GOVERNING LAW.

This Agreement, and all of the rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE LIBERTY NATIONAL LEASING COMPANY
("Owner")

By _____
Title:

BURLINGTON NORTHERN INC. ("Lessee")

By _____
Title:

Exhibit B to
Agreement to Acquire and Lease

LEASE OF MAINTENANCE OF WAY EQUIPMENT

Dated as of February 6, 1981

between

BURLINGTON NORTHERN INC.,

as Lessee

and

THE LIBERTY NATIONAL LEASING COMPANY,

as Owner

LEASE OF MAINTENANCE OF WAY EQUIPMENT

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
§ 1. Net Lease	1
§ 2. Delivery and Acceptance of Units; Designation of Units	2
§ 3. Rentals	3
§ 4. Term of Lease	3
§ 5. Identification Marks	4
§ 6. Taxes	5
§ 7. Payment for Casualty Occurrences; Insurance	8
§ 8. Reports	10
§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification	11
§10. Default	16
§11. Return of Units Upon Default	20
§12. Assignment; Possession and Use	21
§13. Return of Units upon Expiration of Term	23
§14. Recording	24
§15. Additional Opinions	24
§16. Owner's Right to Perform for the Lessee	24
§17. Interest on Overdue Rentals	24
§18. Notices	25
§19. No Recourse	25
§20. Income Tax Indemnity	25
§21. Renewal Option	32
§22. Purchase Option	33
§23. Severability; Effect and Modification of Lease; Third Party Beneficiaries	35
§24. Execution	35
§25. Law Governing	36
TESTIMONIUM	36
SIGNATURES	36
SCHEDULE A - Description of Equipment	
SCHEDULE B - Casualty Values	
SCHEDULE C - Certificate of Acceptance	

LEASE OF MAINTENANCE OF WAY EQUIPMENT dated as of February 6, 1981 between Burlington Northern Inc., a Delaware corporation (hereinafter called the "Lessee"), and The Liberty National Leasing Company, a Kentucky corporation (hereinafter called the "Owner").

RECITALS:

The Owner and the Lessee are parties to an Agreement to Acquire and Lease dated as of February 6, 1981 (hereinafter called the "Agreement to Acquire and Lease") which provides, among other things, the conditions under which the Owner will acquire the maintenance of way equipment described in Schedule A hereto (hereinafter called the "Equipment") and lease the Equipment to the Lessee hereunder.

The Lessee has ordered the Equipment from the builders and vendors thereof listed in Schedule A hereto (collectively the "Builders") pursuant to the Lessee's purchase orders (the "Purchase Orders") and the Lessee has notified each Builder, with a notation to this effect on its Purchase Orders, that its right to purchase the Equipment from such Builder has been assigned to the Owner (such notation being hereinafter referred to as the "Purchase Order Assignment").

The Lessee agrees to lease from the Owner all the units of the Equipment (or such lesser number of units as are delivered and accepted and settled for under the Purchase Orders and the Agreement to Acquire and Lease) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being hereinafter called a "Unit").

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

§1. NET LEASE. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or any other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner,

whether under this Lease, under the Purchase Order Assignments, under the Agreement to Acquire and Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner or any Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner for any reason whatsoever.

§2. DELIVERY AND ACCEPTANCE OF UNITS; DESIGNATION OF UNITS. The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignments; provided, however, that such acceptance shall be in accordance with the provisions of Sections 4 and 5 of the Agreement to Acquire and Lease. Each delivery of a Unit to the Owner under the related Purchase Order Assignment shall be made at the related Builder's plant and shall be deemed to be a delivery hereunder to the Lessee. Upon completion and delivery of a Unit as aforesaid, the Lessee will cause an employee or agent of the Lessee to inspect the same, and, if such Unit is found to conform to the specifications set forth in the related Purchase Order and the other requirements and standards applicable thereto, if any, and if such Unit is found to be acceptable, to execute and deliver to the Owner a certificate

of approval and acceptance, substantially in the form of Schedule C hereto, stating (i) that such Unit has been inspected and approved on behalf of the Lessee and the Owner on the date of such certificate, and (ii) that such Unit has been inspected and accepted on behalf of the Lessee under this Lease and the Owner under the related Purchase Order Assignment on the date of such certificate and is marked in accordance with §5 hereof (such certificate is hereinafter called the "Certificate of Acceptance"). Upon issuance of such Certificate of Acceptance, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and irrevocably accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The inspection and approval and the delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the respective Purchase Order Assignment pursuant to Section 6 of the Agreement to Acquire and Lease shall be null and void and ineffective to subject such Unit to this Lease.

§3. RENTALS. With respect to any Unit subject to this Lease, the Lessee will make to the Owner 15 consecutive semi-annual payments commencing on January 1, 1982 and ending on January 1, 1989. Each such payment will be in an amount equal to 9.2174%, multiplied by the Purchase Price of each such Unit. "Purchase Price" shall mean the base price or prices of each Unit subject to this Lease on the date of such payment as set forth in the Builder's invoice or invoices delivered to the Owner in accordance with the terms of the Agreement to Acquire and Lease (which shall include any applicable freight charges and applicable sales taxes).

If any of the semi-annual rental payment dates referred to above is not a Business Day (as such term is hereinafter defined) the semi-annual rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day. The term "Business Day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, St. Paul, Minnesota or Louisville, Kentucky are authorized or obligated to remain closed.

The Lessee agrees to make all payments (unless otherwise instructed in writing by the Owner) due to the Owner hereunder in immediately available funds on the date due at such place as the Owner may direct.

§4. TERM OF LEASE. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance

of such Unit hereunder and, subject to the provisions of §§7 and 10 hereof, shall terminate on the date on which final payment of rent in respect thereof is due pursuant to §3 hereof. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§3, 6, 7, 9, 11, 13, 17 and 20 hereof) shall survive the expiration of the term of this Lease.

§5. IDENTIFICATION MARKS. The Lessee agrees that each Unit will be identified by the related Builder's identification number affixed thereto ("identification number"), which numbers will be as set forth in Schedule A hereto. The parties understand that such Schedule A will not contain all such numbers until all Units have been delivered and accepted hereunder. Accordingly, the parties agree (i) to amend such Schedule immediately after the delivery and acceptance hereunder of the last Unit of Equipment; and (ii) to refile such amended Schedule in accordance with the last paragraph of Section 4 of the Agreement to Acquire and Lease. The Lessee will keep and maintain or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "LEASED FROM THE LIBERTY NATIONAL LEASING COMPANY LOUISVILLE, KENTUCKY PURSUANT TO AN AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner's title to such Unit and the rights of the Owner under this Lease. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Owner and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded deposited and (ii) the Lessee shall have furnished the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is

necessary to protect the interests of the Owner in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. TAXES. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand, to indemnify and hold the Owner harmless from all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Builders or the Lessee by any Federal, state or local government or governmental subdivision in the United States or by any foreign county or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof, or the indebtedness, if any, with respect thereto; the rentals, receipts or earnings arising therefrom; this Lease, the Agreement to Acquire and Lease and any agreements entered into to finance a portion of the Purchase Price; (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or local government or governmental subdivision or authority thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner or franchise taxes to the extent measured by net income based on gross receipts of the Owner, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the Owner being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the owner resulting from bankruptcy or other

proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; provided, however, that in situations where Owner has not previously paid such Taxes, the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in the third paragraph of this §6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United State or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period if it is contesting the same in the manner provided in the third paragraph of this §6.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this §6, shall be an amount sufficient to restore the Owner to the same after-tax position the Owner would have been in had such Taxes not been imposed.

If a claim is made against the Owner for any Taxes indemnified against under this §6, the Owner shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be

submitted or filed in the name of the Owner in any such proceeding or action) if in the opinion of the Owner such contest or the non-payment of the Taxes would adversely affect the title, property or rights of the Owner hereunder; and provided further that Owner shall have an absolute right to review and revise any such filings before they are submitted in Owner's name. If the Owner shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or any amount representing interest thereon applicable to the amount paid by the Lessee, the Owner shall pay to the Lessee the amount of such refund or interest, net of expenses, but only so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this §6 or arising out of this §6, except obligations resulting from the second sentence of the first paragraph of this §6, the Lessee shall either make or cause to be made such report or return in such manner as will show the interests of the Owner or shall promptly notify or cause to be notified the Owner of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner. All reports and returns to be filed in Owner's name are subject to the prior review and approval of Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this §6 shall survive and continue, notwithstanding the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this §6 shall be made directly to the Owner, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged in the reasonable determination of the Lessee, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for an indefinite period or a period in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease with respect to such Unit, or before such Unit shall have been returned in the manner provided in §11 or §13 hereof, the Lessee shall promptly and fully notify the Owner with respect thereto. On the rental payment date in respect of such Unit suffering a Casualty Occurrence (not earlier than the first regular semi-annual rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value of such Unit as of such payment date (such rental payment date being hereinafter called the "Calculation Date"). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to immediate possession of such Unit (subject to the rights of the Lessee in the third paragraph of this §7).

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 15% (or such lesser amount as may be legally enforceable).

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is"

basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner. If any such Event of Default or event which with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Schedule B hereto opposite such date in the column entitled "Total Casualty Value."

In the event of the requisition for use of any Unit during the term of this Lease with respect to such Unit, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred (other than obligations hereunder with respect to the maintenance and upkeep of the Units which may be rendered impossible by virtue of control of the Units by any requisitioning authority; provided, however, that the foregoing shall in no way excuse the Lessee from performing such obligations upon termination of such requisition), except that if such Unit is returned at any time after the end of the term of this Lease with respect to such Unit, the Lessee shall be obligated to return such Unit to the Owner pursuant to §11 or §13 hereof, as the case may be. Provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, all payments received by the Owner or the Lessee from the requisitioning authority shall be disbursed as follows: first to the Lessee until such time as Lessee shall have been reimbursed by the requisitioning authority for the Rentals paid by Lessee during the time of the requisition; and thereafter, to Owner. All payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this §7 provided, the Lessee shall not be relieved from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Owner in accordance with the terms of this Lease (including the storage period provided under §§11 and 13 hereof), maintain at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned or leased by it, in each case satisfactory to the Owner. The proceeds of any property insurance shall be payable first to the Owner and then the Lessee as their interests may appear.

The Lessee will, at all times prior to the return of the Equipment to the Owner in accordance with the terms of this Lease, at its own expense, carry and maintain public liability insurance with respect to third party personal and property damage in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least not less comprehensive in amounts and against such risks customarily insured against by the Lessee in respect of Equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owner.

Any policies of insurance carried in accordance with this §7 shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner, (ii) name the Owner as an additional named insured and loss payee as its interests may appear without liability for payment of premiums or commissions on its part, and (iii) such policies (except policies of insurance with respect to property damage) shall provide that in respect of the interests of the Owner in such policy the insurance shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the Owner regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person.

§8. REPORTS. On or before May 31 in each year, commencing with calendar year 1982, the Lessee will furnish to the Owner an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder, the total number, description and identification numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use

pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5 hereof have been preserved or replaced. The Owner shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver to the Owner within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the leasing thereof to the Lessee.

§9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION. THE OWNER DOES NOT MAKE, HAS NOT MADE NOR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner and/or the Lessee, as their interest may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against any Builder. The Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following, regardless of any negligence of the Owner: (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 circumstance in connection therewith (including,

without limitation, strict liability in tort); (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 delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance and Approval shall be conclusive evidence as between the Lessee and the Owner that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner, to comply with all the laws of the jurisdiction in which its operations involving the Unit may extend with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at no expense to the Owner; provided, however, that the Lessee may upon prior written notice to the Owner in good faith contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner, adversely affect the property or rights of the Owner, under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. The Lessee, at its own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing

operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made unless it is readily removable from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner if: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this §9 or (iii) notwithstanding the provisions of the fourth paragraph of this §9, such Part cannot be readily removed from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term "Part" for the purposes of this paragraph and §13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Owner, its successors, assigns (including any party to which this Lease or any of the Owner's rights hereunder are assigned for security purposes), principals, agents and servants (hereinafter called "Indemnified Persons"), directly or as third party beneficiaries hereof, harmless from and against, any and all costs, expenses, causes of action, suits, damages, losses, penalties, claims, demands, or judgments, of any nature whatsoever which may be

imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof or from the negligence of the Owner; or (vi) any violation (except by the Indemnified Person seeking indemnity hereunder) or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; provided, however, that the Lessee shall not be obligated hereunder to indemnify any Indemnified Person for any such matters arising from that Person's gross negligence or willful misconduct. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this §9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any

failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay or cause to be paid such payment to such Indemnified Person in an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount necessary to fully indemnify such Indemnified Person for the amount of the loss indemnified. The Lessee and the Owner each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this §9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each Indemnified Person because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by any Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this §9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

§10. DEFAULT. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) payment of any part of the rental provided in §3 hereof or payment in respect of any Casualty Occurrence pursuant to §7 hereof or of any other sums due hereunder shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for 10 days after such payment is due; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Agreement to Acquire and Lease or in any other agreement related hereto or thereto and such default shall continue for 30 days after written notice from the Owner to the Lessee specifying the default and demanding that the same be remedied; or

(D) any representation or warranty made by the Lessee herein or in the Agreement to Acquire and Lease or in any certificate or statement furnished to the Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof; or

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as it may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees 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 and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier, or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtor, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been 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 appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Owner at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same, free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period under a lease similar to this Lease, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to

the excess, if any, of the Casualty Value as of the rental payment date for such Unit on or next preceding the date of termination over the amount the Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold or leased any Unit, the Owner in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding clauses (x) and (y) of this (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date for such Unit on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to the default, each such present value to be computed in each case on the basis of a 10% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

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

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

The Lessee also agrees to furnish the Owner promptly upon becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof.

§11. RETURN OF UNITS UPON DEFAULT. If this Lease shall terminate pursuant to §10 hereof, the Lessee shall (at its own cost and expense) forthwith deliver possession of the Units to the Owner. Each Unit returned to the Owner pursuant to this §11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner and there assembled,

(b) furnish and arrange for the Owner to store such Units on any lines of railroad or premises approved

by the Owner until such Units have been sold, leased or otherwise disposed of by the Owner but not in any event for longer than 270 days, and

(c) cause the Units to be moved to such interchange points as shall be designated by the Owner upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by §7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner the per diem interchange charge for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. ASSIGNMENT; POSSESSION AND USE. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee; provided that no such assignee will have any interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee shall be under no obligation to any assignee of the Owner except upon written notice of such assignment from the Owner. All the rights of the Owner hereunder shall inure to the benefit of the Owner's successors and assigns, except to the extent the same may be reserved to the Owner.

So long as no Event of Default hereunder shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except with the prior written consent of the Owner, the Lessee shall not assign or transfer its leasehold interest or any of its duties under this Lease, in the Units or any of them to any person or entity. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than as permitted by the provisions of this §12 and other than an encumbrance created by the Owner and not the result of an Event of Default or resulting from claims against the Owner not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Owner therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim 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 Owner, materially adversely affect the interest of the Owner in the Equipment or this Lease. Except to the extent permitted by the provisions of this §12, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

The Lessee shall not permit the use of any Unit of Equipment outside the United States of America for a period which will exceed a total of 90 days in any taxable year of the Owner. If no event of default shall have occurred hereunder, the Lessee may (without the Owner's consent) permit the use (in compliance with the terms of this Lease) of the Equipment by companies of which Lessee owns, directly or indirectly, at least 80% of the common stock; provided, however, that the Lessee shall (i) notify the Owner of the name and address of any such user; and (ii) in all respects remain primarily liable under this Lease.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease and in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or

substantially as an entirety, provided: (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, and the Agreement to Acquire and Lease; and (ii) such assignment or transfer, shall not result in a material adverse change in the financial condition of Lessee, materially affecting its ability to perform its obligations under this Lease.

§13. RETURN OF UNITS UPON EXPIRATION OF TERM. On or prior to the termination of the term of this Lease with respect to each Unit or as soon as practicable on or after the termination of the term of this Lease with respect to each Unit and in any event not later than 45 days after the termination of the term of this Lease with respect to each Unit the Lessee will, at its own cost and expense, at the request of the Owner, cause such Unit to be transported to such point or points on its lines or storage tracks as shall be designated by the Owner immediately prior to or following such termination and shall arrange at its expense to store such Unit on such lines or tracks (and if none are designated by the Owner on tracks selected by the Lessee) for a period not to exceed 180 days. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or wilful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this §13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to §9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such §9 and (iii) meet the standards then in

effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any period prior to its return to the Owner as provided for in this §13, the Lessee shall pay to the Owner the Casualty Value of such Unit as determined in accordance with §7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of the term of this Lease as to such Unit, belong to and be the property of the Owner.

§14. RECORDING. The Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and applicable provisions of the Uniform Commercial Code and refiled as provided in Section 5 of this Lease. The Lessee, at its own expense, will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to its satisfaction, of the Owner's interest in the Units, or for the purpose of carrying out the intention of this Lease.

§15. ADDITIONAL OPINIONS. The Lessee will promptly furnish to the Owner evidence of every filing, registering, depositing or recording required pursuant to §14 hereof, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Owner. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. OWNER'S RIGHT TO PERFORM FOR THE LESSEE. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 15% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Lessee upon demand.

§17. INTEREST ON OVERDUE RENTALS. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly

to pay an amount equal to interest at a rate of 15% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§18. NOTICES. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, postage prepaid, addressed as follows:

if to the Owner, at P. O. Box 32500
Louisville, Kentucky 40232
(Attention of President).

If to the Lessee, at 176 East Fifth Street
St. Paul, Minnesota 55101
(Attention of Vice President
and Treasurer)

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above or so furnished for such party.

§19. NO RECOURSE. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

§20. INCOME TAX INDEMNITY.

(a) Loss of Assumed Tax Benefits. If

(i) the Owner is not allowed for its taxable year an investment credit under Section 38 of the Internal Revenue Code of 1954, as amended (the "Code"), with respect to any one or more of the Units placed under this Lease in such taxable year, of not less than

10% of the Purchase Price with respect to such Unit or Units; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation, commencing with its taxable year during which a Unit or Units are placed under this Lease, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have a useful life of seven (7) years; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable to the lender which has financed a portion of the Purchase Price (the "Lender"); or

(iv) any investment credit or deductions for depreciation with respect to any one or more of the units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable to the Lender shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including renewal terms), in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, such inclusion in gross income as a result of a Capital Expenditure or other inability of the Owner to claim

any said investment credit or deduction being herein called a "Loss"), then, if such Loss shall occur as a result of an event described in paragraph (b) of this §20, the Lessee shall pay to the Owner as an indemnity the amount set forth in paragraph (d) of this §20 at the time set forth therein.

(b) Indemnification. The Lessee shall be required to indemnify the Owner with respect to any Loss which results from:

(A) a Loss described in clause (i) or (ii) of paragraph (a) of this §20, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b) or 167(c)(2) of the Code from commencing with the Owner.

(B) the Lessee's use or sublease or use by any person of a Unit or Units in such a manner as to result in a Loss described in clauses (i), (ii), (iv) or (v) of paragraph (b) of this §20;

(C) a Capital Expenditure;

(D) any act, or failure to act, at any time, by the Lessee or any of its officers, employees or agents, regardless of whether or not such act or failure to act is required or permitted under this Lease and including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee; or

(E) any misrepresentation of the Lessee made herein, in the Agreement to Acquire and Lease or in any other document submitted in connection herewith or therewith.

(c) Undertaking. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under company control with it (collectively the "Lessee Group") directly or indirectly will at any time take any action or file any returns or other documents inconsistent with Owner's assumed tax benefits and each member of the Lessee Group will file such returns, take such actions and execute such documents as may be reasonable and necessary to provide Owner its assumed tax benefits.

(d) Proceedings. If, at the conclusion of any audit, the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this §20, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss and enclosing a copy of the relevant portion of the "30 day" letter. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Owner shall promptly request from independent tax counsel selected by the Owner and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30 days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph (d) unless and until the Lessee shall have agreed (in a form acceptable to Owner) to pay to the Owner on demand all reasonable out-of-pocket costs and expenses, including, without limitation, attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, the Lessee shall pay to the Owner on demand the amount of such taxes and interest and penalties thereon which the Owner shall have paid, and

if the Owner subsequently receives a refund of all or any part of such taxes and interest and penalties, it shall promptly pay to the Lessee the amount of such refunded taxes and interest and penalties plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest and penalties. Notwithstanding anything to the contrary contained in this paragraph (d): (i) the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto which it would otherwise be required to take hereunder, provided that the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment; and (ii) Owner need not comply with the full time limits contained in this paragraph (d) if it is advised by the Special Tax Counsel that compliance with such time limits may result in increased tax liability to Owner.

(e) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this §20 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return, and economic and accounting yield and the after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, (B) the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Owner pursuant to the next-to-last sentence of paragraph (d) of this §20 which has not been repaid by the Owner to the Lessee pursuant to such sentence. The Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this §20 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Owner is or expects to be entitled with respect to such Capital Expenditure in the year in which the

Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this §20, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this §20 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (d) of this §20, 30 days after the Lessee's receipt of the statement of the proposed adjustment; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (d) of this §20, 30 days after the day on which such contest is finally concluded. The Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this §20 with respect to a Loss becomes unconditional.

Notwithstanding the foregoing provisions of this paragraph (e) if Owner makes payment to a taxing authority (pursuant to the terms of this Agreement) and there is a suit for refund instituted on behalf of Owner, Lessee shall within ten (10) days of such payment by Owner pay indemnity pursuant to this §20 with respect thereto. If Lessee makes such a payment, any refunds from the taxing authority shall be paid to Lessee, to the extent necessary to reimburse it for such payments to Owner.

(f) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Owner pursuant to this §20 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto.

(g) Miscellaneous. For purposes of this §20, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes. All payments of

indemnity made pursuant to this §20 shall be made by the Lessee directly to the Owner by wire transfer of immediately available funds to the Owner in such manner as the Owner from time to time shall specify in written instructions given to the Lessee. The Lessee's liabilities under this §20 shall, notwithstanding any expiration or termination of this Lease, continue to exist until indemnity payments are made by the Lessee.

(h) Indemnity for Changes in Tax Laws. The rentals payable under §3 hereof and the Casualty Values (as defined in §7 hereof) will be adjusted upward or downward to reflect any amendment to, or change in, the Code or the income tax regulations thereunder, which change or amendment is enacted, adopted and effective on or before July 1, 1981. Such adjustments will be effective as of the rental payment date next following such delivery and will be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner had such amendment or change, as the case may be, not occurred, based on the rates of Federal, state and local taxes on, or measured by, net income from time to time in effect.

(i) Exclusions. Notwithstanding anything to the contrary set forth in this §20, no amount shall be payable to an Owner as an indemnity hereunder in respect of any Loss to the extent that such Loss would otherwise have occurred as a result of the occurrence of any of the following events:

(a) a voluntary transfer or other voluntary disposition by the Owner of any interest in a Unit or any transfer or disposition by an Owner resulting from bankruptcy or other proceedings for the relief of debtors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit, unless, in each case, an Event of Default hereunder shall have occurred and be continuing; or

(b) the failure of an Owner to claim in a timely and proper manner the investment credit, the depreciation deductions, the deductions for the interest payable to the Lender or any foreign tax credit; or

(c) the failure of an Owner to have sufficient liability for Federal income tax against which to credit the investment credit or any foreign tax credit,

or the failure of an Owner to have sufficient income to benefit from the depreciation deductions or the deduction for the interest payable to the Lender, as the case may be; or

(d) a Casualty Occurrence (as defined in §7 hereof) if the Lessee shall have paid the Casualty Value in accordance with this Lease.

§21. RENEWAL OPTION. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 180 days nor more than 360 days prior to the end of the original term of this Lease or extension thereof in respect of the Units still subject to this Lease, elect to extend such original term of this Lease or any renewal thereof in respect of all but not less than all the Units then covered by this Lease for three one-year periods, commencing on the scheduled expiration of such original term of this Lease or any renewal thereof as to such Units, at a "Fair Market Rental" payable, in arrears, in semi-annual payments on the month and day such rentals were payable for such Units in each year of the original term as to such Units. Unless otherwise agreed to by the parties, in no event will any such renewal extend beyond January 1, 1992.

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease as to a particular group of Units, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Rental of such Units, such rental shall be determined in accordance with the foregoing meaning of such Rental by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser

within 15 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§22. PURCHASE OPTION. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 180 days nor more than 360 days prior to the end of the original term of this Lease or extension thereof in respect of the Units still subject to this Lease, elect to Purchase not less than all the Units then covered by this Lease, at its "Fair Market Value".

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the purchase price of the Units which would obtain in an arm's-length transaction between an informed and willing buyer-user under no compulsion to purchase (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase the Units at their Fair Market Value, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Value of such Units, such value shall be determined in accordance with the foregoing meaning of such Fair Market Value by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 15 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

The Fair Market Value of the Units shall be payable by Lessee to Owner not after the latter of: (i) the termination of this Lease; or (ii) five (5) business days after the determination of Fair Market Value pursuant to the above-described procedures. Upon payment of the Fair Market

Value, Owner shall upon the request of Lessee execute and deliver to Lessee, a bill of sale (without representations or warranties except that the Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under Owner) for the Units and such other documents as may be required to transfer title thereto to Lessee, all in such form as may reasonably be requested by Lessee.

§23. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE; THIRD PARTY BENEFICIARIES. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party, each of which shall be deemed to be a third-party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§24. EXECUTION. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Owner shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or date stated in the acknowledgments hereto annexed.

§25. LAW GOVERNING. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

BURLINGTON NORTHERN INC.
("Lessee")

(CORPORATE SEAL)

By _____

Attest:

THE LIBERTY NATIONAL LEASING
COMPANY ("Lessor")

(CORPORATE SEAL)

By _____

Attest:

ACKNOWLEDGEMENTS

State of Minnesota)
) ss.:
County of Ramsey)

On this _____ day of _____, 1981, before me personally appeared _____ to me personally known, who, being by me duly sworn, says that he is the _____ of BURLINGTON NORTHERN INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

ACKNOWLEDGEMENTS

State of _____)
) ss.:
County of _____)

On this _____ day of _____, 1981, before me personally appeared _____ to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of THE LIBERTY NATIONAL LEASING COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

SCHEDULE A

<u>Quantity</u>	<u>Description of Equipment</u>	<u>Unit Base Price (000's)</u>	<u>Vendor/Builder</u>	<u>Identification Numbers</u>
4	Kershaw Ballast Regulator, Model 26-2-1 and Brooms, Model 27-7-21	66	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
3	Kershaw Tie Gang Regulator, Model 24-1	36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Tamper Model EAJDG Electromatic Tamper Mark 1	129	Tamper Canron Rail Group 2401 Edmund Road West Columbia, SC 29169	
4	Nordberg Model BI Dunitite Gaging Machine	39	Russell Railway Supply Room 5410 4940 Viking Drive Minneapolis, MN 55435	
6	RMC Zapper Hydraulic Spiker, Model "SZ"	70	Portlec/RMC Division c/o D. J. Hogan Company 327 South LaSalle Street Chicago, IL 60601	
1	Caterpillar Model 950 Wheel Loader	99	Lincoln Equipment Company 930 West 10 th Street Lincoln, Nebraska 68501	
1	Pettibone Speed Swing, Model 441-B	93	Pettibone Corporation 5700 Sears Tower Chicago, IL 60606	
2	Galion Crane, Model 150-F	120	T. C. Johnson Company P. O. Box 433 521 East Washington Street Chagrin Falls, OH 44022	
1	R. T. W. TH-2170-A Tie Handler W/TR - 1000 Single Tie Head	29	Railway Track Work Company 2381 Philmont Avenue Bethayres, PA 19006	

Quantity	Description of Equipment	Unit Base Price (000's)	Vendor/Builder	Identification Numbers
2	Kershaw Bridge Crane, Model 11-3	\$ 36	Kershaw Manufacturing Company P. O. Box 9328 Montgomery, Alabama 36196	
1	Model FGIX-40 TW Transport Low Boy Trailer	39	Borchert-Ingersoll, Inc. P. O. Box 4303 3275 Dodd Road St. Paul, MN 55164	
3	Massey Ferguson Industrial Tractor, Model MF-30B	20	L. Z. Manufacturing Company, Inc. 1881 Rice Street St. Paul, MN 55113	
2	Ford Diesel Tractor, Model 445	20	Midway Tractor & Equipment Company 3326 University Avenue S. E. Minneapolis, MN 55414	
1	Hyster Challenger Lift Truck, Model H300B	64	Hyster Company 9892 - 40th Avenue South P. O. Box 18168 Columbia Station Seattle, WA 98118	
1	Paxton-Mitchell Super Snooper Bridge Inspection Crane	162	Hayden-Murphy 9301 E. Bloomington Frwy. P. O. Box 20127 Minneapolis, MN 55420	
1	Ingersoll Rand Air Compressor, Model XD-600	29	Air Power Equipment 2631 University Avenue St. Paul, MN 55114	

SCHEDULE B
CASUALTY VALUES

<u>Casualty Value Date</u>	<u>Total Casualty Value*</u>	<u>Termination Value **</u>
7-1-81	107.4285	88.7711
1-1-82	107.1225	88.4651
7-1-82	105.9903	87.3329
1-1-83	103.8717	85.2143
7-1-83	100.9622	82.3048
1-1-84	97.4639	78.8065
7-1-84	87.2723	74.8341
1-1-85	82.8667	70.4284
7-1-85	78.0130	65.5747
1-1-86	72.7569	60.3187
7-1-86	60.8436	54.6245
1-1-87	54.7604	48.5412
7-1-87	48.2365	42.0174
1-1-88	41.3228	35.1036
7-1-88	27.7428	27.7428
1-1-89	20.000	.0000

* Including Investment
Tax Credit Recapture

** Excluding Investment
Tax Credit Recapture

SCHEDULE C

CERTIFICATE OF ACCEPTANCE

To: THE LIBERTY NATIONAL LEASING COMPANY
(the "Lessor")

I, the duly authorized representative for the Lessor and Burlington Northern Inc. (the "Lessee") under the Lease of Maintenance of Way Equipment, dated as of February 6, 1981 (the "Lease") do hereby certify that I thereunder inspected and accepted delivery of the following Units of Equipment:

MANUFACTURER:
TYPE OF EQUIPMENT:
DATE ACCEPTED:
NUMBER OF UNITS:
MANUFACTURER'S IDENTIFICATION NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each Unit in letters not less than one inch in height as follows:

"Leased from The Liberty National Leasing Company
Louisville, Kentucky Pursuant to an Agreement Filed
with the Interstate Commerce Commission"

I do further certify that as of the date hereof (i) the Lessee is not in default under the Agreement to Acquire and Lease dated as of February 6, 1981 or under the Lease; and (ii) the representations and warranties made by the Lessee in said Agreement to Acquire and Lease are true and correct on the date hereof.

Authorized Representative of
Lessor and Lessee

Dated:

Exhibit A to
Agreement to Acquire and Lease

INDEMNITY AGREEMENT

Dated as of February 6, 1981

between

BURLINGTON NORTHERN INC.,

as Lessee

and

THE LIBERTY NATIONAL LEASING COMPANY,

as Owner

INDEMNITY AGREEMENT

THIS INDEMNITY AGREEMENT dated as of February 6, 1981 by and between THE LIBERTY NATIONAL LEASING COMPANY, a Kentucky corporation (the "Owner") and BURLINGTON NORTHERN INC., a Delaware corporation (the "Lessee").

R E C I T A L S :

The Owner and the Lessee have entered into an Agreement to Acquire and Lease dated as of February 6, 1981 (the "Agreement to Acquire and Lease") pursuant to which the Lessee has agreed to lease from the Owner the Maintenance of Way Equipment referred to therein. (All terms used herein which are not otherwise defined shall have the meaning ascribed to them in the Agreement to Acquire and Lease.)

The Lessee desires to lease rather than purchase the Equipment and the Owner is willing to acquire certain of the Lessee's rights and interests under the Purchase Orders as the same relate to the Equipment and to purchase the Equipment, all on the terms and conditions hereinafter set forth and in the Agreement to Acquire and Lease.

In order to induce the Owner to enter into the Lease, the Lessee has agreed to indemnify the Owner in the manner and to the extent hereinafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Owner and the Lessee hereby agree as follows:

SECTION 1. ASSIGNMENT.

(a) The Lessee does hereby assign and set over to the Owner all of the Lessee's rights and interest in and to the Equipment and the Purchase Orders as the same relate to the Equipment including, without limitation, in such assignment, (i) the right to purchase each Unit of Equipment pursuant to the related Purchase Order, and the right to take title to such Unit of Equipment and to be named the purchaser in the bill of sale for such Unit of Equipment, (ii) all claims for damages in respect of each Unit of Equipment purchase by the Owner arising as a result of any default by the Builder thereof under the related Purchase Order, including, without limitation, all warranty and indemnity provisions

contained in such Purchase Order, and all claims arising thereunder, in respect of such Unit of Equipment, and (iii) any and all rights of the Lessee to compel performance of the terms of such Purchase Order. Nothing in this Agreement shall be construed to modify or amend any of the terms of any Purchase Order or any indemnity extended by the Lessee thereunder or hereunder, it being understood that the Lessee shall be and remain solely liable for any such indemnity.

(b) If and so long as no Event of Default or event which, with notice and the lapse of time or both, would constitute an Event of Default under the Lease has occurred and is continuing, the Lessee shall be, and is hereby authorized on behalf of the Owner in the name of the Lessee to exercise all rights and powers of the purchaser under all Purchase Orders with respect to the Equipment except that (i) the Lessee may not exercise the right to purchase and take title to any Equipment except when permitted by the Agreement to Acquire and Lease and the Exhibits thereto; and (ii) the Lessee may not enter into any change, order or other amendment or modification to any Purchase Order without the written consent or countersignature of the Owner if such change order, amendment or modification would result in any rescission, cancellation or termination of such Purchase Order.

(c) If and so long as no Event of Default or event which, with notice of lapse of time or both would constitute an Event of Default under the Lease has occurred and is continuing, if Lessee incurs expense or is otherwise damaged with respect to any Equipment and there is a subsequent payment by the Builder (by way of warranty, indemnity or otherwise) with respect to the reason Lessee incurred such expense or suffered such damage, then Lessee shall be entitled to receive from such payment (as reimbursement for its damages) an amount not exceeding the amount of damages incurred by Lessee with respect thereto.

SECTION 2. CONTINUING LIABILITY OF LESSEE; INDEMNIFICATION BY LESSEE.

It is expressly agreed that, anything herein contained to the contrary notwithstanding: (a) the Lessee shall at all times remain liable to the Builders to perform all of the duties and obligations of the purchaser under the Purchase Orders to the same extent as if this Agreement had not been executed, (b) the execution of this Agreement shall not modify any contractual rights of the Builders under the Purchase Orders and the liabilities of the Builders under

the Purchase Orders shall be to the same extent and continue as if this Agreement had not been executed, (c) the exercise by the Owner of any of the rights assigned hereunder shall not release the Lessee from any of its duties or obligations to the Builders under the Purchase Orders except to the extent that such exercise by the Owner shall constitute performance of such duties and obligations, and (d) the Owner shall not have any obligation or liability under the Purchase Orders by reasons of, or arising out of, this instrument or be obligated to perform any of the obligations or duties of the Lessee under the Purchase Orders or to make any payment (other than under the terms and conditions set forth in the Agreement to Acquire and Lease) or to make any inquiry of the sufficiency of or authorization for any payment received by any of them or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

Lessee agrees to have each Builder execute and deliver to the Owner a bill or bills of sale, satisfactory to the Owner, transferring to the Owner all right, title and interest of the Builder to each Unit of Equipment delivered by the Builder, warranting to the Owner that, at the time of delivery of such Unit, the Builder had legal title thereto and good and lawful right to sell the same and that such Units were new and unused and free of all claims, liens, security interests and other encumbrances of any nature (except only the rights created under the Lease), and covenanting to defend the title to such Units against demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Builder to the Owner.

Lessee agrees to indemnify and save the Owner harmless against any liability, loss, damage, claim or expense which arises out of any defect in title to any Unit of Equipment, except defects in title arising by, through or under Owner and covenants and warrants to the Owner that it will, at its cost and expense, defend the Owner's right, title and interest in each Unit of Equipment (subject to defects in title arising by, through or under Owner) against the demands of all persons originating during the term of this Lease. Lessee further agrees to indemnify the Owner for any loss, liability, damage, claim or expense arising out of (1) the failure of any Builder to be duly incorporated and validly existing under the laws of the State of its incorporation; (2) the non-compliance of any documents executed and delivered by any Builder with its charter or by-laws; and (3) any suit, action or proceeding in which any Builder raises the defense of ultra vires. Furthermore,

Lessee agrees to indemnify and save the Owner harmless from any liability, loss, damage, claim and expense which arises out of any claims for patent infringement relative to the Equipment.

The indemnities provided herein are in addition to, and not in lieu of, any other indemnities of the Lessee contained in the Lease.

SECTION 3. FURTHER ASSURANCE.

The Lessee agrees that at any time and from time to time, upon the written request of the Owner, the Lessee will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as the Owner may reasonably request in order to obtain the full benefits of the assignment in this Indemnity Agreement and of the rights and powers herein granted.

SECTION 4. REPRESENTATIONS AND WARRANTIES OF LESSEE.

The Lessee does hereby represent and warrant that:

(a) The Lessee is not in default in any material respect under any Purchase Order and each Purchase Order is, or will be, upon acceptance thereof by the related Builder, enforceable against the Lessee in accordance with its terms.

(b) The Lessee has not assigned or pledged, and hereby covenants that it will not assign or pledge so long as this instrument shall remain in effect, the whole or any part of the rights hereby assigned to anyone other than the Owner.

SECTION 5. NOTICES.

Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when personally delivered to the intended recipient or deposited in the United States mails, certified first class, postage prepaid, addressed to the intended recipient as provided in the Lease.

SECTION 6. SUCCESSORS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of the Owner and the Lessee and their respective permitted successors and assigns.

SECTION 7. GOVERNING LAW.

This Agreement, and all of the rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

THE LIBERTY NATIONAL LEASING COMPANY
("Owner")

By J. E. Kettler
Title: Vice-President

BURLINGTON NORTHERN INC. ("Lessee")

By R. C. Burton
Title: Vice President
and Treasurer

Exhibit B to
Agreement to Acquire and Lease

LEASE OF MAINTENANCE OF WAY EQUIPMENT

Dated as of February 6, 1981

between

BURLINGTON NORTHERN INC.,

as Lessee

and

THE LIBERTY NATIONAL LEASING COMPANY,

as Owner

LEASE OF MAINTENANCE OF WAY EQUIPMENT

TABLE OF CONTENTS

	<u>Page</u>
RECITALS	1
§ 1. Net Lease	1
§ 2. Delivery and Acceptance of Units; Designation of Units	2
§ 3. Rentals	3
§ 4. Term of Lease	3
§ 5. Identification Marks	4
§ 6. Taxes	5
§ 7. Payment for Casualty Occurrences; Insurance	8
§ 8. Reports	10
§ 9. Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification	11
§10. Default	16
§11. Return of Units Upon Default	20
§12. Assignment; Possession and Use	21
§13. Return of Units upon Expiration of Term	23
§14. Recording	24
§15. Additional Opinions	24
§16. Owner's Right to Perform for the Lessee	24
§17. Interest on Overdue Rentals	24
§18. Notices	25
§19. No Recourse	25
§20. Income Tax Indemnity	25
§21. Renewal Option	32
§22. Purchase Option	33
§23. Severability; Effect and Modification of Lease; Third Party Beneficiaries	35
§24. Execution	35
§25. Law Governing	36
TESTIMONIUM	36
SIGNATURES	36
SCHEDULE A - Description of Equipment	
SCHEDULE B - Casualty Values	
SCHEDULE C - Certificate of Acceptance	

LEASE OF MAINTENANCE OF WAY EQUIPMENT dated as of February 6, 1981 between Burlington Northern Inc., a Delaware corporation (hereinafter called the "Lessee"), and The Liberty National Leasing Company, a Kentucky corporation (hereinafter called the "Owner").

RECITALS:

The Owner and the Lessee are parties to an Agreement to Acquire and Lease dated as of February 6, 1981 (hereinafter called the "Agreement to Acquire and Lease") which provides, among other things, the conditions under which the Owner will acquire the maintenance of way equipment described in Schedule A hereto (hereinafter called the "Equipment") and lease the Equipment to the Lessee hereunder.

The Lessee has ordered the Equipment from the builders and vendors thereof listed in Schedule A hereto (collectively the "Builders") pursuant to the Lessee's purchase orders (the "Purchase Orders") and the Lessee has notified each Builder, with a notation to this effect on its Purchase Orders, that its right to purchase the Equipment from such Builder has been assigned to the Owner (such notation being hereinafter referred to as the "Purchase Order Assignment").

The Lessee agrees to lease from the Owner all the units of the Equipment (or such lesser number of units as are delivered and accepted and settled for under the Purchase Orders and the Agreement to Acquire and Lease) at the rentals and for the term and upon the conditions hereinafter provided (each such unit so leased being hereinafter called a "Unit").

NOW, THEREFORE, in consideration of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Owner hereby agrees to lease the Units to the Lessee upon the following terms and conditions:

§1. NET LEASE. This Lease is a net lease. The Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein provided, the Lessee shall not be entitled to any abatement of rent or any other amounts due hereunder, reduction thereof or setoff against rent or such other amounts, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Owner,

whether under this Lease, under the Purchase Order Assignments, under the Agreement to Acquire and Lease or otherwise, including the Lessee's rights by subrogation hereunder or thereunder against the Owner or any Builder or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the obligations of the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of authorization of this Lease, any insolvency of or bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Owner for any reason whatsoever.

§2. DELIVERY AND ACCEPTANCE OF UNITS; DESIGNATION OF UNITS. The Owner hereby appoints the Lessee its agent for inspection and acceptance of the Units pursuant to the Purchase Order Assignments; provided, however, that such acceptance shall be in accordance with the provisions of Sections 4 and 5 of the Agreement to Acquire and Lease. Each delivery of a Unit to the Owner under the related Purchase Order Assignment shall be made at the related Builder's plant and shall be deemed to be a delivery hereunder to the Lessee. Upon completion and delivery of a Unit as aforesaid, the Lessee will cause an employee or agent of the Lessee to inspect the same, and, if such Unit is found to conform to the specifications set forth in the related Purchase Order and the other requirements and standards applicable thereto, if any, and if such Unit is found to be acceptable, to execute and deliver to the Owner a certificate

of approval and acceptance, substantially in the form of Schedule C hereto, stating (i) that such Unit has been inspected and approved on behalf of the Lessee and the Owner on the date of such certificate, and (ii) that such Unit has been inspected and accepted on behalf of the Lessee under this Lease and the Owner under the related Purchase Order Assignment on the date of such certificate and is marked in accordance with §5 hereof (such certificate is hereinafter called the "Certificate of Acceptance"). Upon issuance of such Certificate of Acceptance, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and irrevocably accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The inspection and approval and the delivery, inspection and acceptance hereunder of any Unit of Equipment excluded from the respective Purchase Order Assignment pursuant to Section 6 of the Agreement to Acquire and Lease shall be null and void and ineffective to subject such Unit to this Lease.

§3. RENTALS. With respect to any Unit subject to this Lease, the Lessee will make to the Owner 15 consecutive semi-annual payments commencing on January 1, 1982 and ending on January 1, 1989. Each such payment will be in an amount equal to 9.2174%, multiplied by the Purchase Price of each such Unit. "Purchase Price" shall mean the base price or prices of each Unit subject to this Lease on the date of such payment as set forth in the Builder's invoice or invoices delivered to the Owner in accordance with the terms of the Agreement to Acquire and Lease (which shall include any applicable freight charges and applicable sales taxes).

If any of the semi-annual rental payment dates referred to above is not a Business Day (as such term is hereinafter defined) the semi-annual rental payment otherwise payable on such date shall then be payable on the next succeeding Business Day. The term "Business Day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, St. Paul, Minnesota or Louisville, Kentucky are authorized or obligated to remain closed.

The Lessee agrees to make all payments (unless otherwise instructed in writing by the Owner) due to the Owner hereunder in immediately available funds on the date due at such place as the Owner may direct.

§4. TERM OF LEASE. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance

of such Unit hereunder and, subject to the provisions of §§7 and 10 hereof, shall terminate on the date on which final payment of rent in respect thereof is due pursuant to §3 hereof. Except for obligations of the Lessee hereunder which are specifically stated to terminate at a fixed time, the obligations of the Lessee hereunder (including, but not limited to, the obligations under §§3, 6, 7, 9, 11, 13, 17 and 20 hereof) shall survive the expiration of the term of this Lease.

§5. IDENTIFICATION MARKS. The Lessee agrees that each Unit will be identified by the related Builder's identification number affixed thereto ("identification number"), which numbers will be as set forth in Schedule A hereto. The parties understand that such Schedule A will not contain all such numbers until all Units have been delivered and accepted hereunder. Accordingly, the parties agree (i) to amend such Schedule immediately after the delivery and acceptance hereunder of the last Unit of Equipment; and (ii) to refile such amended Schedule in accordance with the last paragraph of Section 4 of the Agreement to Acquire and Lease. The Lessee will keep and maintain or cause to be kept and maintained, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words, "LEASED FROM THE LIBERTY NATIONAL LEASING COMPANY LOUISVILLE, KENTUCKY PURSUANT TO AN AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law or reasonably requested in order to protect the Owner's title to such Unit and the rights of the Owner under this Lease. The Lessee will not place or permit any such Unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such name and words which may be removed, defaced, obliterated or destroyed. The Lessee will not change or permit to be changed the identifying number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been delivered to the Owner and duly filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded deposited and (ii) the Lessee shall have furnished the Owner an opinion of counsel to the effect that such statement has been so filed, recorded and deposited, such filing, recordation and deposit will protect the Owner's interests in such Units and no filing, recording, deposit or giving of notice with or to any other Federal, state or local government or agency thereof is

necessary to protect the interests of the Owner in such Units.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership.

§6. TAXES. Whether or not any of the transactions contemplated hereby are consummated, the Lessee agrees to pay or cause to be paid, and on written demand, to indemnify and hold the Owner harmless from all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner, the Builders or the Lessee by any Federal, state or local government or governmental subdivision in the United States or by any foreign county or subdivision thereof, upon or with respect to: any Unit or any part thereof; the manufacture, purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof, or the indebtedness, if any, with respect thereto; the rentals, receipts or earnings arising therefrom; this Lease, the Agreement to Acquire and Lease and any agreements entered into to finance a portion of the Purchase Price; (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or of any state or local government or governmental subdivision or authority thereof and (if and to the extent that any person indemnified hereunder is currently allowed a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Owner, or franchise taxes to the extent measured by net income based on gross receipts of the Owner, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Lease, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the Owner being taxed by such foreign country or jurisdiction on its worldwide income without regard to the transactions contemplated by this Lease shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; and (ii) any Taxes imposed as a direct result of a voluntary transfer or other voluntary disposition by or on behalf of the Owner or any transfer or disposition by or on behalf of the owner resulting from bankruptcy or other

proceedings for the relief of creditors in which the Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit or interest in rentals under this Lease, without the consent of the Lessee, unless, in each case, such transfer or disposition is in connection with a Casualty Occurrence or an Event of Default shall have occurred and be continuing; provided, however, that in situations where Owner has not previously paid such Taxes, the Lessee shall not be required to pay any Taxes during the period it may be contesting or causing to be contested the same in the manner provided in the third paragraph of this §6. The Lessee further agrees to pay on or before the time or times prescribed by law any tax imposed on or measured solely by the net income of the Lessee (or the affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Lessee is a member) under the laws of the United State or of any state or local government or governmental subdivision thereof, or of any foreign country or subdivision or authority thereof which, if unpaid, might result in a lien or other encumbrance upon any Unit; provided, however, that the Lessee shall not be required to pay any such tax during the period if it is contesting the same in the manner provided in the third paragraph of this §6.

The amount which the Lessee shall be required to pay with respect to any Taxes indemnified against pursuant to this §6, shall be an amount sufficient to restore the Owner to the same after-tax position the Owner would have been in had such Taxes not been imposed.

If a claim is made against the Owner for any Taxes indemnified against under this §6, the Owner shall promptly notify the Lessee. If reasonably requested by the Lessee in writing, the Owner shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Lessee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such Taxes in the name of the Owner; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be

submitted or filed in the name of the Owner in any such proceeding or action) if in the opinion of the Owner such contest or the non-payment of the Taxes would adversely affect the title, property or rights of the Owner hereunder; and provided further that Owner shall have an absolute right to review and revise any such filings before they are submitted in Owner's name. If the Owner shall obtain a refund of all or any part of such Taxes previously reimbursed by the Lessee in connection with any such contest or any amount representing interest thereon applicable to the amount paid by the Lessee, the Owner shall pay to the Lessee the amount of such refund or interest, net of expenses, but only so long as no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

In case any report or return is required to be made with respect to any obligation of the Lessee under this §6 or arising out of this §6, except obligations resulting from the second sentence of the first paragraph of this §6, the Lessee shall either make or cause to be made such report or return in such manner as will show the interests of the Owner or shall promptly notify or cause to be notified the Owner of such requirement and shall make or cause to be made such report or return in such manner as shall be satisfactory to the Owner. All reports and returns to be filed in Owner's name are subject to the prior review and approval of Owner. All costs and expenses (including reasonable legal and accountants' fees) of preparing any such return or report shall be borne by the Lessee.

All the obligations of the Lessee under this §6 shall survive and continue, notwithstanding the termination of this Lease, but only with respect to periods included in the term of this Lease. Payment due from the Lessee under this §6 shall be made directly to the Owner, except to the extent paid to a governmental agency or taxing authority. The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

The Lessee shall furnish or cause to be furnished promptly, upon request, such information and data as are normally available to the Lessee and which the Owner reasonably may require to permit compliance with the requirements of any taxing authorities.

§7. PAYMENT FOR CASUALTY OCCURRENCES; INSURANCE.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged in the reasonable determination of the Lessee, or permanently rendered unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise resulting in loss of possession by the Lessee for an indefinite period or a period in excess of the then remaining term of this Lease (such occurrences being hereinafter called "Casualty Occurrences"), during the term of this Lease with respect to such Unit, or before such Unit shall have been returned in the manner provided in §11 or §13 hereof, the Lessee shall promptly and fully notify the Owner with respect thereto. On the rental payment date in respect of such Unit suffering a Casualty Occurrence (not earlier than the first regular semi-annual rental payment date) next succeeding the delivery of such notice (or, in the event such rental payment date will occur within 15 days after delivery of notice, on the following rental payment date, or, in the event the term of this Lease has already expired or will expire within 15 days after delivery of such notice, on a date within 15 days of such delivery), the Lessee shall pay or cause to be paid to the Owner an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value of such Unit as of such payment date (such rental payment date being hereinafter called the "Calculation Date"). Upon the making of such payment by or on behalf of the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and (except in the case of the loss, theft or complete destruction of such Unit) the Owner shall be entitled to immediate possession of such Unit (subject to the rights of the Lessee in the third paragraph of this §7).

If the date upon which the making of such payment by the Lessee in respect of any Unit as required as aforesaid shall be after the term of this Lease in respect of such Unit has expired, no rental for such Unit shall accrue after the end of such term but the Lessee, in addition to paying the Casualty Value for such Unit, shall pay or cause to be paid interest thereon from the end of such term to the date of such payment at the rate of 15% (or such lesser amount as may be legally enforceable).

The Owner hereby appoints the Lessee its agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, before or after the expiration of this Lease, at the best price obtainable on an "as is, where is"

basis. Provided that the Lessee has previously paid the Casualty Value to the Owner and no Event of Default hereunder, or event which with notice or lapse of time or both would constitute such an Event of Default, shall have occurred and be continuing, the Lessee shall be entitled to retain the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to the Owner. If any such Event of Default or event which with notice or lapse of time or both would constitute an Event of Default, has occurred and is continuing, the Lessee shall promptly pay all such proceeds to the Owner.

The Casualty Value of each Unit as of the Calculation Date for each such Unit shall be that percentage of the Purchase Price of each Unit as is set forth in Schedule B hereto opposite such date in the column entitled "Total Casualty Value."

In the event of the requisition for use of any Unit during the term of this Lease with respect to such Unit, all of the Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred (other than obligations hereunder with respect to the maintenance and upkeep of the Units which may be rendered impossible by virtue of control of the Units by any requisitioning authority; provided, however, that the foregoing shall in no way excuse the Lessee from performing such obligations upon termination of such requisition), except that if such Unit is returned at any time after the end of the term of this Lease with respect to such Unit, the Lessee shall be obligated to return such Unit to the Owner pursuant to §11 or §13 hereof, as the case may be. Provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, all payments received by the Owner or the Lessee from the requisitioning authority shall be disbursed as follows: first to the Lessee until such time as Lessee shall have been reimbursed by the requisitioning authority for the Rentals paid by Lessee during the time of the requisition; and thereafter, to Owner. All payments received by the Owner or the Lessee from the requisitioning authority for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, the Owner.

Except as hereinabove in this §7 provided, the Lessee shall not be relieved from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by the Lessee hereunder.

The Lessee will, at all times prior to the return of the Equipment to the Owner in accordance with the terms of this Lease (including the storage period provided under §§11 and 13 hereof), maintain at its own expense, property and casualty insurance in respect of the Units at the time subject hereto, at least in amounts and against risks customarily insured against by railroad companies on similar equipment owned by them and in amounts and against risks customarily insured against by the Lessee on similar equipment owned or leased by it, in each case satisfactory to the Owner. The proceeds of any property insurance shall be payable first to the Owner and then the Lessee as their interests may appear.

The Lessee will, at all times prior to the return of the Equipment to the Owner in accordance with the terms of this Lease, at its own expense, carry and maintain public liability insurance with respect to third party personal and property damage in such amounts and for such risks and with such insurance companies as is consistent with prudent industry practice but in any event at least not less comprehensive in amounts and against such risks customarily insured against by the Lessee in respect of Equipment owned or leased by it similar in nature to the Units, in each case satisfactory to the Owner.

Any policies of insurance carried in accordance with this §7 shall (i) require 30 days' prior notice of cancellation or material change in coverage to the Owner, (ii) name the Owner as an additional named insured and loss payee as its interests may appear without liability for payment of premiums or commissions on its part, and (iii) such policies (except policies of insurance with respect to property damage) shall provide that in respect of the interests of the Owner in such policy the insurance shall not be invalidated by any action or inaction of the Lessee or any other person and shall insure the Owner regardless of any breach or violation of any warranty, declaration or condition contained in such policies by the Lessee or by any other person.

§8. REPORTS. On or before May 31 in each year, commencing with calendar year 1982, the Lessee will furnish to the Owner an accurate statement (a) setting forth as at the preceding December 31 the total number, description and identification numbers of all Units then leased hereunder, the total number, description and identification numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use

pending repair (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Units as the Owner may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by §5 hereof have been preserved or replaced. The Owner shall have the right by its agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Owner may request during the continuance of this Lease.

The Lessee agrees at its expense to prepare and deliver to the Owner within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Owner) any and all reports (other than income tax returns) to be filed by the Owner with any Federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the leasing thereof to the Lessee.

§9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; MAINTENANCE; INDEMNIFICATION. THE OWNER DOES NOT MAKE, HAS NOT MADE NOR SHALL BE DEEMED TO MAKE OR HAVE MADE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS OR ANY COMPONENT THEREOF DELIVERED TO THE LESSEE HEREUNDER, AND THE OWNER DOES NOT MAKE ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS OR ANY COMPONENT THEREOF FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT OR ANY COMPONENT THEREOF (EITHER UPON DELIVERY THEREOF TO THE LESSEE OR OTHERWISE), it being agreed that all such risks, as between the Owner and the Lessee, are to be borne by the Lessee; but the Owner hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for the account of the Owner and/or the Lessee, as their interest may appear, at the Lessee's sole cost and expense, whatever claims and rights the Owner may have against any Builder. The Owner shall have no responsibility or liability to the Lessee or any other person with respect to any of the following, regardless of any negligence of the Owner: (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 circumstance in connection therewith (including,

without limitation, strict liability in tort); (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 delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. The Lessee's delivery of a Certificate of Acceptance and Approval shall be conclusive evidence as between the Lessee and the Owner that the Units described therein are in all the foregoing respects satisfactory to the Lessee; and the Lessee will not assert any claim of any nature whatsoever against the Owner based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Owner, to comply with all the laws of the jurisdiction in which its operations involving the Unit may extend with all rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units and in the event that such laws or rules require any alteration, replacement, modification or addition of or to any part of any Unit, the Lessee will fully conform therewith at no expense to the Owner; provided, however, that the Lessee may upon prior written notice to the Owner in good faith contest or cause to be contested the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner, adversely affect the property or rights of the Owner, under this Lease.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit (including any parts installed on or replacements made to any Unit) which is subject to this Lease in good operating order, repair and condition, ordinary wear and tear excepted. The Lessee, at its own cost and expense, may from time to time make such alterations, modifications and additions (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (hereinafter collectively called "Additions") to the Units as the Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing

operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease; provided, however, that no such Addition shall be made unless it is readily removable from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which the Unit would have had immediately prior to such time had such Addition not been made assuming the Unit was then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in the Owner if: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in replacement of, or in substitution for, any such original Part, (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the terms of the second or third paragraph of this §9 or (iii) notwithstanding the provisions of the fourth paragraph of this §9, such Part cannot be readily removed from the Unit to which it relates without causing material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in the Lessee. The term "Part" for the purposes of this paragraph and §13 hereof shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

The Lessee shall pay, and shall protect, indemnify and hold the Owner, its successors, assigns (including any party to which this Lease or any of the Owner's rights hereunder are assigned for security purposes), principals, agents and servants (hereinafter called "Indemnified Persons"), directly or as third party beneficiaries hereof, harmless from and against, any and all costs, expenses, causes of action, suits, damages, losses, penalties, claims, demands, or judgments, of any nature whatsoever which may be

imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation reasonable attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising or alleged to arise out of this Lease or the Units, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, sublease, possession, use, operation, condition, sale, return or other disposition of any Unit or portion thereof; (ii) any latent or other defects whether or not discoverable by any Indemnified Person or the Lessee; (iii) any claim for patent, trademark or copyright infringement; (iv) any claims based on strict liability in tort or imposed by statute; (v) any injury to or the death of any person or any damage to or loss of property on or near the Units or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the ownership, use, replacement, adaptation or maintenance of the Units or of any other equipment in connection with the Units (whether owned or under the control of the Owner, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof or from the negligence of the Owner; or (vi) any violation (except by the Indemnified Person seeking indemnity hereunder) or alleged violation, of any provision of this Lease or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Units or the leasing, subleasing, ownership, use, replacement, adaptation or maintenance thereof; provided, however, that the Lessee shall not be obligated hereunder to indemnify any Indemnified Person for any such matters arising from that Person's gross negligence or willful misconduct. All payments hereunder shall be made directly to the Indemnified Person. The Lessee shall be obligated under this §9, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Lessee under this §9 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Lessee may and, upon such Indemnified Person's request, will at the Lessee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Lessee and approved by such Indemnified Person, as the case may be, and, in the event of any

failure by the Lessee to do so, the Lessee shall pay all costs and expenses (including without limitation reasonable attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Lessee is required to make any payment under this §9, the Lessee shall pay or cause to be paid such payment to such Indemnified Person in an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the discretion of the Indemnified Person), shall be equal to the amount necessary to fully indemnify such Indemnified Person for the amount of the loss indemnified. The Lessee and the Owner each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of, or the making of provision satisfactory to the Indemnified Person for the full payment of, any indemnities as contained in this §9 by the Lessee, and provided that no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, the Lessee shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (except the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to this §9 shall be paid over to the Lessee to the extent necessary to reimburse the Lessee for indemnification payments previously made in respect of such matter.

The Lessee further agrees to indemnify, protect and hold harmless each Indemnified Person from and against any and all liabilities, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each Indemnified Person because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Lessee and not manufactured by any Builder or of any design, system, process, formula or combination specified by the Lessee and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The indemnities contained in this §9 shall survive the expiration or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this §9 shall be deemed to create any rights of subrogation in any insurer or third party against the Lessee or the Owner therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

The foregoing indemnities by the Lessee shall not constitute a guarantee by the Lessee of any value of the Equipment following the expiration of the term hereof as such term may or may not be renewed.

§10. DEFAULT. If, during the continuance of this Lease, one or more of the following events (each such event being herein sometimes called an "Event of Default") shall occur:

(A) payment of any part of the rental provided in §3 hereof or payment in respect of any Casualty Occurrence pursuant to §7 hereof or of any other sums due hereunder shall not be made by or on behalf of the Lessee, and such failure to make payment shall continue for 10 days after such payment is due; or

(B) the Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein, in the Agreement to Acquire and Lease or in any other agreement related hereto or thereto and such default shall continue for 30 days after written notice from the Owner to the Lessee specifying the default and demanding that the same be remedied; or

(D) any representation or warranty made by the Lessee herein or in the Agreement to Acquire and Lease or in any certificate or statement furnished to the Owner pursuant to or in connection with any such agreements proves untrue in any material respect as of the date of issuance or making thereof; or

(E) a petition for reorganization under Title 11 of the United States Code, as now constituted or as it may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees 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 and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier, or by the trustee in such proceedings in accordance with the provisions of 11 U.S.C. §1168, or any successor provision as the same may hereafter be amended; or

(F) any other proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtor, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been 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 appointed (whether or not subject to ratification) for the Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then, in any such case, the Owner at its option, may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Owner may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same, free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to the Lessee for such action or inaction or for any proceeds arising therefrom; but the Owner shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee as damages for loss of a bargain and not as a penalty, whichever of the following amounts the Owner, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which the Owner reasonably estimates to be obtainable for the Unit during such period under a lease similar to this Lease, such present value to be computed in each case on the basis of a 10% per annum discount, compounded semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to

the excess, if any, of the Casualty Value as of the rental payment date for such Unit on or next preceding the date of termination over the amount the Owner reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event the Owner shall have sold or leased any Unit, the Owner in lieu of collecting any amounts payable to the Owner by the Lessee pursuant to the preceding clauses (x) and (y) of this (b) with respect to such Unit, may, if it shall so elect, demand that the Lessee pay the Owner and the Lessee shall pay to the Owner on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date for such Unit on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which the Owner reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to the default, each such present value to be computed in each case on the basis of a 10% per annum discount, compounded, in the case of rental which is estimated under clause II of this sentence, semi-annually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, the Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of the Owner's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

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

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies; and a waiver of any such right on one occasion shall not constitute a waiver of such right as to any other occasion and shall not be effective unless in writing signed by the Owner.

The Lessee also agrees to furnish the Owner promptly upon becoming aware of any condition which constitutes an Event of Default, or which with notice or lapse of time or both would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof.

§11. RETURN OF UNITS UPON DEFAULT. If this Lease shall terminate pursuant to §10 hereof, the Lessee shall (at its own cost and expense) forthwith deliver possession of the Units to the Owner. Each Unit returned to the Owner pursuant to this §11 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet the standards then in effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to the Owner as above required, the Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner cause such Units to be transported to such location as shall reasonably be designated by the Owner and there assembled,

(b) furnish and arrange for the Owner to store such Units on any lines of railroad or premises approved

by the Owner until such Units have been sold, leased or otherwise disposed of by the Owner but not in any event for longer than 270 days, and

(c) cause the Units to be moved to such interchange points as shall be designated by the Owner upon any sale, lease or other disposal of all or any of the Units.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee (and the Lessee will maintain the insurance required by §7 of this Lease to be maintained during this period) and are of the essence of this Lease; and, upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of any such Unit, to inspect the same. In the event that the Units or any thereof are sold, the Lessee shall pay to the Owner the per diem interchange charge for each such Unit which shall not have been assembled, delivered and stored, as hereinbefore provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser thereof.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this §11, the Lessee hereby irrevocably appoints the Owner as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Owner, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§12. ASSIGNMENT; POSSESSION AND USE. This Lease shall be assignable in whole or in part by the Owner without the consent of the Lessee; provided that no such assignee will have any interlocking relationship with the Lessee within the meaning of Section 10 of the Clayton Act. The Lessee shall be under no obligation to any assignee of the Owner except upon written notice of such assignment from the Owner. All the rights of the Owner hereunder shall inure to the benefit of the Owner's successors and assigns, except to the extent the same may be reserved to the Owner.

So long as no Event of Default hereunder shall have occurred and be continuing, the Lessee shall be entitled to the possession of the Units in accordance with the terms of this Lease but, except with the prior written consent of the Owner, the Lessee shall not assign or transfer its leasehold interest or any of its duties under this Lease, in the Units or any of them to any person or entity. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than as permitted by the provisions of this §12 and other than an encumbrance created by the Owner and not the result of an Event of Default or resulting from claims against the Owner not related to the ownership of the Units) upon or with respect to any Unit or the interest of the Owner therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim 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 Owner, materially adversely affect the interest of the Owner in the Equipment or this Lease. Except to the extent permitted by the provisions of this §12, the Lessee shall not part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units.

The Lessee shall not permit the use of any Unit of Equipment outside the United States of America for a period which will exceed a total of 90 days in any taxable year of the Owner. If no event of default shall have occurred hereunder, the Lessee may (without the Owner's consent) permit the use (in compliance with the terms of this Lease) of the Equipment by companies of which Lessee owns, directly or indirectly, at least 80% of the common stock; provided, however, that the Lessee shall (i) notify the Owner of the name and address of any such user; and (ii) in all respects remain primarily liable under this Lease.

Nothing in this §12 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease and in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or

substantially as an entirety, provided: (i) that such assignee or transferee will not, upon the effectiveness of such merger, consolidation or acquisition, be in default under any provision of this Lease and shall have assumed all of the obligations of the Lessee under this Lease, and the Agreement to Acquire and Lease; and (ii) such assignment or transfer, shall not result in a material adverse change in the financial condition of Lessee, materially affecting its ability to perform its obligations under this Lease.

§13. RETURN OF UNITS UPON EXPIRATION OF TERM. On or prior to the termination of the term of this Lease with respect to each Unit or as soon as practicable on or after the termination of the term of this Lease with respect to each Unit and in any event not later than 45 days after the termination of the term of this Lease with respect to each Unit the Lessee will, at its own cost and expense, at the request of the Owner, cause such Unit to be transported to such point or points on its lines or storage tracks as shall be designated by the Owner immediately prior to or following such termination and shall arrange at its expense to store such Unit on such lines or tracks (and if none are designated by the Owner on tracks selected by the Lessee) for a period not to exceed 180 days. During any such storage period the Lessee will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or user of such Unit, to inspect the same; provided, however, that the Lessee shall not be liable for any injury to or the death of any person exercising, either on behalf of the Owner or any prospective purchaser or user, the rights of inspection granted under this sentence, except in the case of negligence or wilful wrongdoing of the Lessee or of its employees or agents and except to the extent otherwise provided by law. The assembly, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to cause the assembly, delivery, storage and transporting of the Units. Each Unit returned to the Owner pursuant to this §13 shall (i) be in the same operating order, repair and condition as when originally delivered to the Lessee, reasonable wear and tear excepted, (ii) have attached or affixed thereto any Part title to which is in the Owner pursuant to §9 hereof and have removed therefrom at Lessee's expense any Part or Addition title to which is in the Lessee or any other person pursuant to such §9 and (iii) meet the standards then in

effect under the Interchange Rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. If any Unit suffers a Casualty Occurrence during any period prior to its return to the Owner as provided for in this §13, the Lessee shall pay to the Owner the Casualty Value of such Unit as determined in accordance with §7 hereof. All gross amounts earned in respect of any Unit shall, from and after the termination of the term of this Lease as to such Unit, belong to and be the property of the Owner.

§14. RECORDING. The Lessee, at its own expense, will cause this Lease to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and applicable provisions of the Uniform Commercial Code and refiled as provided in Section 5 of this Lease. The Lessee, at its own expense, will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or rerecord whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to its satisfaction, of the Owner's interest in the Units, or for the purpose of carrying out the intention of this Lease.

§15. ADDITIONAL OPINIONS. The Lessee will promptly furnish to the Owner evidence of every filing, registering, depositing or recording required pursuant to §14 hereof, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Owner. This Lease shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

§16. OWNER'S RIGHT TO PERFORM FOR THE LESSEE. If the Lessee fails to perform or comply with any of its agreements contained herein, the Owner may upon notice to the Lessee itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of the Owner incurred in connection with such performance or compliance, together with interest on such amount at the rate of 15% per annum (or such lesser amount as may be legally enforceable), shall be payable by the Lessee upon demand.

§17. INTEREST ON OVERDUE RENTALS. Anything to the contrary herein notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly

to pay an amount equal to interest at a rate of 15% per annum on the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§18. NOTICES. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when delivered to such other party or by registered or certified mail, postage prepaid, addressed as follows:

if to the Owner, at P. O. Box 32500
Louisville, Kentucky 40232
(Attention of President)

If to the Lessee, at 176 East Fifth Street
St. Paul, Minnesota 55101
(Attention of Vice President
and Treasurer)

or addressed to any party at such other address as such party shall hereafter furnish to the other parties in writing. Any certificate, document or report required to be furnished by any party hereto to the other parties shall be delivered to the address set forth above or so furnished for such party.

§19. NO RECOURSE. No recourse shall be had in respect of any obligation due under this Lease, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Owner or the Lessee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers, as such, or beneficiaries being forever released as a condition of and as consideration for the execution of this Lease.

§20. INCOME TAX INDEMNITY.

(a) Loss of Assumed Tax Benefits. If

(i) the Owner is not allowed for its taxable year an investment credit under Section 38 of the Internal Revenue Code of 1954, as amended (the "Code"), with respect to any one or more of the Units placed under this Lease in such taxable year, of not less than

10% of the Purchase Price with respect to such Unit or Units; or

(ii) the Owner is not allowed the benefit of current deductions for depreciation, commencing with its taxable year during which a Unit or Units are placed under this Lease, on any one or more of the Units under Section 167(a) of the Code (x) computed pursuant to any method of depreciation authorized by Section 167(b)(2) or (3) of the Code and (y) computed on the basis (A) of a net salvage value of zero, (B) that the basis of such Unit or Units under Section 167(g) of the Code is not less than the Purchase Price with respect to such Unit or Units, and (C) that such Unit or Units have a useful life of seven (7) years; or

(iii) the Owner is not allowed the benefit of current deductions under Section 163 of the Code for interest payable to the lender which has financed a portion of the Purchase Price (the "Lender"); or

(iv) any investment credit or deductions for depreciation with respect to any one or more of the units are recaptured in whole or in part pursuant to Section 47 or Section 1245 of the Code or any successor provision or provisions thereto; or

(v) any amount includible in the gross income of the Owner with respect to any one or more of the Units or any deduction allowable to the Owner with respect to such Unit or Units or with respect to any interest payable to the Lender shall be treated as derived from, or allocable to, sources outside the United States; or

(vi) any amount is included, at any time prior to the end of the term of this Lease (including renewal terms), in the gross income of the Owner as a result of any repair, improvement, alteration, modification or addition (including replacement of parts) to such Unit or Units made by the Lessee (herein called a "Capital Expenditure");

(any such failure to allow, such recapture, such treatment of income or deductions as derived from or allocable to sources without the United States, such inclusion in gross income as a result of a Capital Expenditure or other inability of the Owner to claim

any said investment credit or deduction being herein called a "Loss"), then, if such Loss shall occur as a result of an event described in paragraph (b) of this §20, the Lessee shall pay to the Owner as an indemnity the amount set forth in paragraph (d) of this §20 at the time set forth therein.

(b) Indemnification. The Lessee shall be required to indemnify the Owner with respect to any Loss which results from:

(A) a Loss described in clause (i) or (ii) of paragraph (a) of this §20, if such Loss results from the use of a Unit by any person so as to preclude the "original use of such property" within the meaning of Section 48(b) or 167(c)(2) of the Code from commencing with the Owner.

(B) the Lessee's use or sublease or use by any person of a Unit or Units in such a manner as to result in a Loss described in clauses (i), (ii), (iv) or (v) of paragraph (b) of this §20;

(C) a Capital Expenditure;

(D) any act, or failure to act, at any time, by the Lessee or any of its officers, employees or agents, regardless of whether or not such act or failure to act is required or permitted under this Lease and including, without limitation, any act, or failure to act, in respect of the income tax returns of the Lessee; or

(E) any misrepresentation of the Lessee made herein, in the Agreement to Acquire and Lease or in any other document submitted in connection herewith or therewith.

(c) Undertaking. Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under company control with it (collectively the "Lessee Group") directly or indirectly will at any time take any action or file any returns or other documents inconsistent with Owner's assumed tax benefits and each member of the Lessee Group will file such returns, take such actions and execute such documents as may be reasonable and necessary to provide Owner its assumed tax benefits.

(d) Proceedings. If, at the conclusion of any audit, the Owner receives a preliminary or "30 day" letter from the Internal Revenue Service proposing an adjustment in any item that, if agreed to by the Owner, would result in a Loss with respect to which the Lessee would be required to indemnify the Owner pursuant to this §20, the Owner shall promptly notify the Lessee of such proposed adjustment and shall furnish to the Lessee a statement describing such Loss and enclosing a copy of the relevant portion of the "30 day" letter. If requested to do so by the Lessee, within 20 days after receipt of such statement, the Owner shall promptly request from independent tax counsel selected by the Owner and approved by the Lessee (the "Special Tax Counsel"), their opinion as to whether there is a meritorious basis for contesting such proposed adjustment. If the opinion is to the effect that there is a meritorious basis for contesting such proposed adjustment, the Owner shall contest such proposed adjustment beyond the level of the Internal Revenue Service auditing agent by such administrative proceedings, if any, as may be determined by the Owner in its sole discretion. Upon the conclusion of such administrative proceedings, if any, the Owner shall promptly notify the Lessee of the final adjustment proposed by the Internal Revenue Service and, if the Owner receives within 30 days after such notice a written request to do so from the Lessee, the Owner shall contest such final adjustment in a court of competent jurisdiction. If the Lessee requests the Owner to appeal the decision of such a court or of any intermediate appellate court, the Owner shall promptly request from Special Tax Counsel their opinion as to whether there is a meritorious basis for appealing such decision. If the opinion is to the effect that there is a meritorious basis for appealing such decision, the Owner shall appeal such decision. The Owner, in its sole discretion, shall determine the initial and any appellate court and, if the adjustment relates to an item claimed on a tax return, shall determine whether the proceedings shall be for redetermination of the deficiency proposed to be assessed by the Internal Revenue Service or for refund of taxes paid based on such deficiency. The Owner shall not be required to take any action as set forth in this paragraph (d) unless and until the Lessee shall have agreed (in a form acceptable to Owner) to pay to the Owner on demand all reasonable out-of-pocket costs and expenses, including, without limitation, attorneys' fees and expenses incurred by it in connection with the taking of such action. If the Owner elects to pay taxes based on a proposed deficiency and sue for a refund thereof, the Lessee shall pay to the Owner on demand the amount of such taxes and interest and penalties thereon which the Owner shall have paid, and

if the Owner subsequently receives a refund of all or any part of such taxes and interest and penalties, it shall promptly pay to the Lessee the amount of such refunded taxes and interest and penalties plus the amount of any interest received by the Owner from the United States Government with respect to such refunded taxes and interest and penalties. Notwithstanding anything to the contrary contained in this paragraph (d): (i) the Owner may at any time, whether before or after commencing to take any action with respect to a proposed adjustment, decline to take any further action with respect thereto which it would otherwise be required to take hereunder, provided that the Owner notifies the Lessee that it waives its right to any indemnity with respect to any Loss that will result from acceptance of such proposed adjustment; and (ii) Owner need not comply with the full time limits contained in this paragraph (d) if it is advised by the Special Tax Counsel that compliance with such time limits may result in increased tax liability to Owner.

(e) Amount and Time of Payment of Indemnity. The amount of indemnity payable by the Lessee pursuant to this §20 with respect to a Loss shall be such amount as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return, and economic and accounting yield and the after-tax cash flow that would have been realized by the Owner if such Loss had not occurred, based on the rates of Federal, state and local taxes on, based on, or measured by, net income in effect from time to time. The amount of such payment of indemnity shall reflect (A) the amount of interest, additions to tax and penalties payable by the Owner with respect to such Loss, (B) the amount of Federal, state and local taxes on, based on, or measured by, net income (at the rates in effect from time to time), interest, additions to tax and penalties incurred by the Owner as a result of the receipt of such indemnity payment, and (C) any amount paid by the Lessee to the Owner pursuant to the next-to-last sentence of paragraph (d) of this §20 which has not been repaid by the Owner to the Lessee pursuant to such sentence. The Owner shall furnish the Lessee with a notice setting forth in reasonable detail the computations and methods used in computing such amount of indemnity.

In determining the amount of indemnity payable by the Lessee pursuant to this §20 with respect to a Loss which results from a Capital Expenditure, there shall be taken into account any investment credits and depreciation deductions to which the Owner is or expects to be entitled with respect to such Capital Expenditure in the year in which the

Capital Expenditure is made and in subsequent years, but if any such investment credits or depreciation deductions are subsequently disallowed, recaptured or treated as derived from or allocable to sources outside the United States, such disallowance, recapture or allocation shall be treated as a Loss described in clause (i), (ii), (iv) or (v) of paragraph (a) of this §20, as the case may be.

The Lessee's obligation to pay any indemnity payable pursuant to this §20 with respect to a Loss shall become unconditional (1) in the case of a Loss that is required to be reflected on a tax return of the Owner, 30 days after the date such tax return is filed; (2) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is not contested pursuant to paragraph (d) of this §20, 30 days after the Lessee's receipt of the statement of the proposed adjustment; and (3) in the case of a Loss that results from a proposed adjustment of the Internal Revenue Service that is contested pursuant to paragraph (d) of this §20, 30 days after the day on which such contest is finally concluded. The Lessee shall pay to the Owner a lump sum indemnity at the time its obligation to pay indemnity pursuant to this §20 with respect to a Loss becomes unconditional.

Notwithstanding the foregoing provisions of this paragraph (e) if Owner makes payment to a taxing authority (pursuant to the terms of this Agreement) and there is a suit for refund instituted on behalf of Owner, Lessee shall within ten (10) days of such payment by Owner pay indemnity pursuant to this §20 with respect thereto. If Lessee makes such a payment, any refunds from the taxing authority shall be paid to Lessee, to the extent necessary to reimburse it for such payments to Owner.

(f) Adjustment of Casualty Values. In the event that the Lessee shall be required to indemnify the Owner pursuant to this §20 with respect to a Loss relating to a Unit or Units, the Casualty Value of such Unit or Units shall be appropriately reduced to reflect the reduction, if any, in taxes that will be payable by the Owner with respect to such Unit or Units upon a Casualty Occurrence with respect thereto.

(g) Miscellaneous. For purposes of this §20, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which the Owner is a member, if consolidated returns are filed for such affiliated group for Federal income tax purposes. All payments of

indemnity made pursuant to this §20 shall be made by the Lessee directly to the Owner by wire transfer of immediately available funds to the Owner in such manner as the Owner from time to time shall specify in written instructions given to the Lessee. The Lessee's liabilities under this §20 shall, notwithstanding any expiration or termination of this Lease, continue to exist until indemnity payments are made by the Lessee.

(h) Indemnity for Changes in Tax Laws. The rentals payable under §3 hereof and the Casualty Values (as defined in §7 hereof) will be adjusted upward or downward to reflect any amendment to, or change in, the Code or the income tax regulations thereunder, which change or amendment is enacted, adopted and effective on or before July 1, 1981. Such adjustments will be effective as of the rental payment date next following such delivery and will be made in such manner as will result, in the Owner's reasonable judgment, in preserving for the Owner both the after-tax rate of return and the after-tax cash flow that would have been realized by the Owner had such amendment or change, as the case may be, not occurred, based on the rates of Federal, state and local taxes on, or measured by, net income from time to time in effect.

(i) Exclusions. Notwithstanding anything to the contrary set forth in this §20, no amount shall be payable to an Owner as an indemnity hereunder in respect of any Loss to the extent that such Loss would otherwise have occurred as a result of the occurrence of any of the following events:

(a) a voluntary transfer or other voluntary disposition by the Owner of any interest in a Unit or any transfer or disposition by an Owner resulting from bankruptcy or other proceedings for the relief of debtors in which such Owner is the debtor, whether voluntary or involuntary, of any interest in any Unit, unless, in each case, an Event of Default hereunder shall have occurred and be continuing; or

(b) the failure of an Owner to claim in a timely and proper manner the investment credit, the depreciation deductions, the deductions for the interest payable to the Lender or any foreign tax credit; or

(c) the failure of an Owner to have sufficient liability for Federal income tax against which to credit the investment credit or any foreign tax credit,

or the failure of an Owner to have sufficient income to benefit from the depreciation deductions or the deduction for the interest payable to the Lender, as the case may be; or

(d) a Casualty Occurrence (as defined in §7 hereof) if the Lessee shall have paid the Casualty Value in accordance with this Lease.

§21. RENEWAL OPTION. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 180 days nor more than 360 days prior to the end of the original term of this Lease or extension thereof in respect of the Units still subject to this Lease, elect to extend such original term of this Lease or any renewal thereof in respect of all but not less than all the Units then covered by this Lease for three one-year periods, commencing on the scheduled expiration of such original term of this Lease or any renewal thereof as to such Units, at a "Fair Market Rental" payable, in arrears, in semi-annual payments on the month and day such rentals were payable for such Units in each year of the original term as to such Units. Unless otherwise agreed to by the parties, in no event will any such renewal extend beyond January 1, 1992.

Fair Market Rental shall be determined for each extended term of this Lease on the basis of, and shall be equal in amount to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than a lessee currently in possession) and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to extend the term of this Lease as to a particular group of Units, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Rental of such Units, such rental shall be determined in accordance with the foregoing meaning of such Rental by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser

within 15 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Rental of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Rental. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

§22. PURCHASE OPTION. Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may by written notice delivered to the Owner not less than 180 days nor more than 360 days prior to the end of the original term of this Lease or extension thereof in respect of the Units still subject to this Lease, elect to Purchase not less than all the Units then covered by this Lease, at its "Fair Market Value".

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the purchase price of the Units which would obtain in an arm's-length transaction between an informed and willing buyer-user under no compulsion to purchase (other than a lessee currently in possession) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If, after 30 days from the giving of notice by the Lessee of the Lessee's election to purchase the Units at their Fair Market Value, the Owner and the Lessee are unable to agree upon a determination of the Fair Market Value of such Units, such value shall be determined in accordance with the foregoing meaning of such Fair Market Value by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of such value by this appraisal procedure, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 15 days after such notice is given, each party shall appoint an independent appraiser within 15 days after such notice is given, and the two appraisers so appointed shall within 15 days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 15 days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Value of the Units subject to the proposed extended term within 30 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of Fair Market Value of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto as the Fair Market Value. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne by the Lessee.

The Fair Market Value of the Units shall be payable by Lessee to Owner not after the latter of: (i) the termination of this Lease; or (ii) five (5) business days after the determination of Fair Market Value pursuant to the above-described procedures. Upon payment of the Fair Market

Value, Owner shall upon the request of Lessee execute and deliver to Lessee, a bill of sale (without representations or warranties except that the Units are free and clear of all claims, liens, security interests and other encumbrances by or in favor of any person claiming by, through or under Owner) for the Units and such other documents as may be required to transfer title thereto to Lessee, all in such form as may reasonably be requested by Lessee.

§23. SEVERABILITY; EFFECT AND MODIFICATION OF LEASE; THIRD PARTY BENEFICIARIES. Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than the permitted successors and assigns of a party, each of which shall be deemed to be a third-party beneficiary hereof) and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of any third party except as aforesaid.

§24. EXECUTION. This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to the Owner shall be deemed to be the original counterpart. Although for convenience this Lease is dated as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or date stated in the acknowledgments hereto annexed.

§25. LAW GOVERNING. The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the date first above written.

BURLINGTON NORTHERN INC.
("Lessee")

(CORPORATE SEAL)

By

R. C. Burlington

Vice President
and Treasurer

Attest:

G. H. [Signature]
Assistant Secretary

THE LIBERTY NATIONAL LEASING
COMPANY ("Lessor")

(CORPORATE SEAL)

By

J. E. [Signature]

Attest:

Robert W. Anderson
Assistant Secretary

SCHEDULE B
CASUALTY VALUES

<u>Casualty Value Date</u>	<u>Total Casualty Value</u>
7-1-81	107.4285
1-1-82	107.1225
7-1-82	105.9903
1-1-83	103.8717
7-1-83	100.9622
1-1-84	97.4639
7-1-84	87.2723
1-1-85	82.8667
7-1-85	78.0130
1-1-86	72.7569
7-1-86	60.8436
1-1-87	54.7604
7-1-87	48.2365
1-1-88	41.3228
7-1-88	27.7428
1-1-89	20.000

SCHEDULE C

CERTIFICATE OF ACCEPTANCE

To: THE LIBERTY NATIONAL LEASING COMPANY
(the "Lessor")

I, the duly authorized representative for the Lessor and Burlington Northern Inc. (the "Lessee") under the Lease of Maintenance of Way Equipment, dated as of February 6, 1981 (the "Lease") do hereby certify that I thereunder inspected and accepted delivery of the following Units of Equipment:

MANUFACTURER:
TYPE OF EQUIPMENT:
DATE ACCEPTED:
NUMBER OF UNITS:
MANUFACTURER'S IDENTIFICATION NUMBERS:

I do further certify that the foregoing Units are in good order and condition, and appear to conform to the specifications, requirements and standards applicable thereto.

I do further certify that each of the foregoing Units has been marked by means of a stencil printed in contrasting colors upon each side of each Unit in letters not less than one inch in height as follows:

"Leased from The Liberty National Leasing Company
Louisville, Kentucky Pursuant to an Agreement Filed
with the Interstate Commerce Commission"

I do further certify that as of the date hereof (i) the Lessee is not in default under the Agreement to Acquire and Lease dated as of February 6, 1981 or under the Lease; and (ii) the representations and warranties made by the Lessee in said Agreement to Acquire and Lease are true and correct on the date hereof.

Authorized Representative of
Lessor and Lessee

Dated: