16507-A

RECORDATION NO. _____ FILED 1425

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INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of September 1, 1989

between

NORTH WESTERN LEASING COMPANY

and

NEMLC LEASING CORPORATION

AGREEMENT AND ASSIGNMENT dated as of September 1, 1989, between NEMLC LEASING CORPORATION (hereinafter called the Assignee) and NORTH WESTERN LEASING COMPANY (hereinafter called the Assignor).

WHEREAS, the Assignor and Chicago and North Western Transportation Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the sale and delivery on the conditions therein set forth, by the Assignor and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to the Assignor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Assignor hereby assigns and transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Assignor in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit is paid to the Assignor by the Assignee pursuant to Section 4 hereof;

(b) all the right, title and interest of the Assignor in and to the Conditional Sale Agreement (except the right to supply and deliver the Equipment and the right to receive reimbursements for taxes paid by the Assignor as provided in Article 5 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to the Assignor under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Assignor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Assignor (except as otherwise provided in Section 3 hereof) for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; <u>provided, however</u>, that this

Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Assignor to sell and deliver the Equipment or otherwise under the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Assignor to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Assignor. In furtherance of the foregoing assignment and transfer, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but, except as otherwise provided in Section 3 hereof, as between the Assignor and the Assignee, at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Assignor agrees that it shall sell and deliver the Equipment in full accordance with the provisions of the Conditional Sale Agreement; and that notwithstanding this Assignment it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Assignor. The Assignor further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad (which are subordinate to the security interests granted under the Conditional Sale Agreement), all of which the Assignor hereby agrees to cause to be released on or before the Closing Date [as defined in Article 4 of the Conditional Sale Agreement] for such unit; other than any Permitted Encumbrances [as defined in Article 12 of the Conditional Sale Agreement]; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); and the Assignor further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Assignor under the Conditional Sale Agreement, including those created by any general mortgage of the Railroad or any Permitted Encumbrances; all <u>subject, however</u>, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. Notwithstanding anything herein to the contrary, the Assignor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Assignor will indemnify, protect and hold harmless the Assignee from and against all injuries, liabilities, claims, demands, costs, charges, expenses, losses or damages suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Assignor of any obligation with respect to the Equipment or the manufacture, construction, reconstruction, possession, purchase, delivery, installation, ownership, use, repair, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Assignor.

The Assignor agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to each Group (as defined in said Article 4) of Equipment, shall pay to the Assignor an amount equal to the portion of the Purchase Price of the units of Equipment in such Group as shown on the invoice or invoices therefor then being settled for which, under the terms of said Article 4(b), is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its counsel, in such number of counterparts as may be reasonably requested:

(a) a bill of sale from the Assignor to the Assignee transferring to the Assignee all right, title and interest of the Assignor in the units of Equipment in the Group, warranting to the Assignee that at the time of delivery of such units under the Conditional Sale Agreement the Assignor had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than any Permitted Encumbrances; other than those created by any general mortgage of the Railroad (which are subordinate to the security interests granted under the Conditional Sale Agreement); other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); warranting to the Assignee that on the date of such bill

of sale such units were free of all claims, liens, security interests and other encumbrances created by any general mortgage of the Railroad which are prior or equal to the security interest of the Assignee in such units; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Assignor under the Conditional Sale Agreement including Permitted Encumbrances and those created by any general mortgage of the Railroad;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group, as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Assignor for the units of Equipment in the Group for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein and compliance with the definition of "Collateral Value" contained in the Finance Agreement with respect to such units;

(d) an opinion of counsel for the Railroad dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by the parties thereto other than the Railroad and its subsidiaries, has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Assignor and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment and the Acknowledgement of Notice of Assignment (hereinafter called the "Acknowledgement") have been duly authorized, executed and delivered by the Assignor and Railroad and, assuming due authorization, execution and delivery of this Assignment by the Assignee, are legal, valid and binding instruments, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than any Permitted Encumbrances; other than those created by any general mortgage of the Railroad (except that such opinion of counsel shall address the priority of any lien created by any general mortgage of the Railroad and conclude that any such lien is subordinate in priority to the security interests granted under the Conditional Sale Agreement),

all of which have been released; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment), (vi) no approval of the Interstate Commerce Commisssion or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement, this Assignment or the Acknowledgement, or if any such approval is necessary, it has been obtained, (vii) appropriate UCC filing statement(s) have been filed and, for the units of the Equipment, no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (viii) the Railroad is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation, the Railroad has duly qualified and is authorized to do business and is in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary and the Railroad has all requisite power and authority to own its properties and to carry on its business as now conducted, (ix) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Railroad adversely relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement, the Finance Agreement, or the Acknowledgement or the enforceability thereof in accordance with their terms or requiring any approval of its stockholders in respect thereof and (x) neither the execution and delivery of the Conditional Sale Agreement, the Finance Agreement, the Acknowledgement and this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof, will conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or by which it is bound.

(e) an opinion of counsel for the Assignor, dated as of such Closing Date, to the effect that (i) the Assignor is a duly organized and validly existing corporation in good standing under the laws of its jurisdiction of incorporation, the Assignor has duly qualified and is authorized to do business and is in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary and the Assignor has all requisite power and authority to own its properties and to carry on its business as now conducted, (ii) the Finance Agreement, assum-

ing due authorization, execution and delivery by the parties thereto other than the Railroad and its subsidiaries, has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Assignor and enforceable against the Assignor in accordance with its terms, (iv) this Assignment has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Assignor, (v) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (vi) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Assignor and is valid and effective to transfer the security interest of the Assignor in and to the units of Equipment to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than any Permitted Encumbrances, other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment) arising from, through or under the Assignor, (vii) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Assignor adversely relating to or affecting the execution and delivery by the Assignor of the Conditional Sale Agreement, the Finance Agreement and this Assignment or the enforceability thereof and hereof in accordance with their terms or requiring any approval of its stockholders in respect thereof or hereof, and (viii) neither the execution and delivery of the Conditional Sale Agreement, the Finance Agreement or this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof, will conflict with or result in a violation of, or constitute a default under, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any instrument to which the Assignor is now a party or by which it is bound; and

(f) a certificate of an officer of the Railroad dated as of such settlement date, to the effect that no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and no tax liens (including, without limitation, tax liens filed pursuant

to Section 6323 of the Internal Revenue Code of 1986, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment.

(g) copies of vendor invoices for each item of Equipment, which invoices evidence a shipping date for such Equipment and copies of cancelled checks evidencing payment of such invoices. In order to verify that Assignor has taken delivery of the Equipment free and clear of any and all vendor liens, Assignee may, at its option, conduct appropriate lien searches up to a date which is at least ten (10) days beyond the date of delivery of the last item of Equipment to be accepted, and search the records of filings made at the Interstate Commerce Commision. Assignor may also, at its option, make inquiry of one or more of the vendors of the Equipment in order to determine that the purchase price for such Equipment has been paid.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 4, counsel may qualify any 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 laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in clause (v) of subparagraph (d) and clause (vi) of subparagraph (e), insofar as they relate to title being vested in the Assignor free of all claims, liens, security interests and other encumbrances at the time of acquisition thereof by the Assignor, counsel may rely (A) with respect to a vendor to the Assignor which is either the Railroad or one of its subsidiaries, upon a certificate of an authorized officer of the Railroad setting forth the agreements and instruments, if any, to which the Equipment (or any interest therein) had been subject immediately prior to and at the time of such acquisition, provided that such counsel states that he has examined such certificate and, based upon his experience as counsel to the Railroad and its subsidiaries he believes that he is justified in relying on such certificate and, (B) as to vendors to the Assignor other than the Railroad or any of its subsidiaries, solely upon the warranties and representations made by such vendors to the Assignor in their bills of sale to the Assignor and upon any opinions of counsel for such vendors.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (d) or (e) of Article 16 of the Conditional Sale Agreement or if any other event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of

default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for the Group, the Assignee shall reassign to the Assignor, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and priviliges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Assignor hereby:

(a) represents and warrants to the Assignee, its successor and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Assignor is concerned, a legal, valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, successors and assigns, it will, subsequent to payment by the Assignee to such Assignor of the amounts required to be paid under Section 4 hereof, execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Assignor therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

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

NORTH WESTERN LEASING COMPANY

By John E Volkseth
Vice President - Finance

[CORPORATE SEAL]

ATTEST:

ASSISTANT SECRETARY

NEMLC LEASING CORPORATION

By Gary Christen KRM

Title: Sr. Vice President

[CORPORATE SEAL]

ATTEST:

Nancy B. Collins
Asst. Secty.

L190-3 (0-9)

STATE OF ILLINOIS)
COUNTY OF COOK) SS.:

On this 30th day of August, 1989, before me personally appeared J. E. Voldseth, to me personally known, who, being by being by me duly swore, says that he is the Vice President - Finance of NORTH WESTERN 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.

Faith P Delgado
Notary Public

[Notarial Seal]

My Commission expires 3/3/90

STATE OF Massachusetts)
COUNTY OF Suffolk) SS.:

On this 5th day of September, 1989, before me personally appeared Gary L Christensen, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of NEMLC Leasing Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said ~~national banking association~~ corporation, that said instrument was signed and sealed on behalf of said ~~state banking association~~ 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 ~~national banking association~~ corporation.

Caroline Barbara Rapoza
Notary Public

[Notarial Seal]

My Commission expires 12/16/94

L190-3 (10.*)

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By John E Volkseth
Vice President - Finance

L190-3 (11)

Chicago and NorthWestern
Railway Company

165 N Canal St
Chicago, Illinois 60606

Office of the Secretary
312 559 6156

March 2, 1995

File: A-13246-A
EOC: A-435

Mr. Sidney Strickland, Jr.
Secretary
Interstate Commerce Commission
Washington, DC 20423

RE: Conditional Sale Agreement dated as of September 1, 1989, between North Western Leasing Company and Chicago and North Western Transportation Company and Agreement and Assignment dated as of September 1, 1989, between North Western Leasing Company and NEMLC Leasing Corporation

ICC Recordation No.: 16507

Dear Mr. Strickland:

In connection with the above agreements, please be advised that the name of Chicago and North Western Transportation Company was changed to **Chicago and North Western Railway Company** effective May 6, 1994, pursuant to the Certificate of Amendment of Restated Certificate of Incorporation of Chicago and North Western Transportation Company filed with the State of Delaware on May 5, 1994.

Sincerely,

K. A. Dombrowski

K. A. Dombrowski
Assistant Secretary

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

On this 2nd day of March, 1995, before me personally appeared K. A. Dombrowski, to me personally known, who, by me being duly sworn, says that she is Assistant Secretary of Chicago and North Western Railway Company and that the foregoing instrument was signed on behalf of said corporation by authority of its board of directors, and she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My commission expires: April 12, 1995 Penny Menchey

" OFFICIAL SEAL "
PENNY MENCHEY
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4/12/95