



# Community First

National Bank • 501 Dakota Ave. • Box 878 • Wahpeton, North Dakota 58074-0878

(701) 642-5567

October 22, 1996

20319-A  
RECORDED  
OCT 22 1996 11 50 AM  
NORTH DAKOTA REGISTER OF DEEDS

*Originals - K. M. Muehlberg  
Secretary*

Secretary  
Surface Transportation Board  
Room 2311  
12th Street and Constitution Avenue NW  
Washington, DC 20423

RE: Documents for Recordation

Dear Secretary:

I have enclosed an original, and one counterpart, of the document described below to be recorded pursuant to § 11301 of Title 49 of the U.S. Code.

This document is a Security Agreement (Relating to Present and Future Leases), a ~~primary~~ <sup>secondary</sup> document, and is dated October 22, 1996. I request that the document be cross-indexed.  
*The primary document to which this Security Agreement relates is recorded under 20319.*

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

Debtor: Western Railroad Equipment Company  
1433 Utica Avenue South  
St. Louis Park, MN 55416

Secured Party: Community First National Bank, N.A.  
501 Dakota Avenue  
P.O. Box 878  
Wahpeton, ND 58074-0878

The equipment covered by the document consists of fifty-seven (57) railroad cars, all of which are Covered Hopper Cars and which are more specifically described as follows:

<u>CAR</u> <u>NUMBER</u>	<u>AAR</u> <u>CAR CODE</u>	<u>AAR</u> <u>MECH. DESIGN.</u>
PLMX 20022	C414	LO
PLMX 20025	C414	LO
PLMX 20026	C414	LO
PLMX 20027	C414	LO
PLMX 20030	C414	LO

**COMMUNITY FIRST NATIONAL BANK, N.A.**

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PLMX 20034	C414	LO
PLMX 20156	C414	LO
PLMX 20158	C414	LO
PLMX 20159	C414	LO
PLMX 20160	C414	LO
PLMX 20161	C414	LO
PLMX 20162	C414	LO
PLMX 20163	C414	LO
PLMX 20164	C414	LO
PLMX 20166	C414	LO
PLMX 20167	C414	LO
PLMX 20168	C414	LO
PLMX 20169	C414	LO
PLMX 20170	C414	LO
PLMX 20171	C414	LO
PLMX 20172	C414	LO
PLMX 20173	C414	LO
PLMX 20179	C414	LO
PLMX 20157	C414	LO
PLMX 20165	C414	LO
PLMX 20044	C414	LO
PLMX 20045	C414	LO
PLMX 20046	C414	LO
PLMX 20047	C414	LO
PLMX 20049	C414	LO
PLMX 20023	C414	LO
PLMX 20024	C414	LO
PLMX 20028	C414	LO
PLMX 20029	C414	LO
PLMX 20031	C414	LO
PLMX 20033	C414	LO
PLMX 20035	C414	LO
PLMX 2001	C414	LO
PLMX 2002	C414	LO
PLMX 2009	C414	LO
PLMX 2012	C414	LO
PLMX 2019	C414	LO
PLMX 2000	C414	LO
PLMX 2003	C414	LO
PLMX 2004	C414	LO
PLMX 2005	C414	LO
PLMX 2006	C414	LO
PLMX 2007	C414	LO
PLMX 2008	C414	LO
PLMX 2010	C414	LO
PLMX 2011	C414	LO
PLMX 2013	C414	LO
PLMX 2014	C414	LO
PLMX 2015	C414	LO

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October 21, 1996

PLMX 2016	C414	LO
PLMX 2017	C414	LO
PLMX 2018	C414	LO

A fee of \$22.00 is enclosed. Please return the original and any extra copies not needed for recordation to Community First National Bank, N.A., Attn: Dean Reese, P.O. Box 878, Wahpeton, ND 58074-0878.

A short summary of the document to appear in the index follows:

The document is a Security Agreement (Relating to Present and Future Leases) dated October 22, 1996, between Western Railroad Equipment Company, 1433 Utica Avenue South, St. Louis Park, Minnesota 55416, as Debtor, and Community First National Bank, N.A., 501 Dakota Avenue, PO Box 878, Wahpeton, North Dakota 58074-0878, as Secured Party. The Security Agreement covers fifty-seven (57) railroad cars, all of which are Covered Hopper Cars, and all of which have an A.A.R. Mechanical Designation of "LO" and an A.A.R. Car Code of "C414". The car numbers with respect to the Covered Hopper Cars are identified as "PLMX 2000 through PLMX 2019, PLMX 20022 through PLMX 20031, PLMX 20033 through 20035, PLMX 20044 through 20047, PLMX 20049, PLMX 20156 through PLMX 20173, and PLMX 20179.

Very truly yours,



Dean Reese  
Assistant Vice President

enc.

REGISTRATION NO. 20319-A  
OCT 2 - 1996 11 AM

**SECURITY AGREEMENT  
(Relating to Present and Future Leases)**

This Agreement dated as of October 22, 1996, by and between WESTERN RAILROAD EQUIPMENT COMPANY, a Minnesota corporation whose address is 1433 Utica Avenue South, St. Louis Park, MN 55416, ("Lessor") and COMMUNITY FIRST NATIONAL BANK, a national banking association whose address is 501 Dakota Avenue, PO Box 878, Wahpeton, North Dakota 58075 ("Bank").

**1. Definitions. As used herein:**

- a. "Assignment" means a writing signed by Lessor in a form satisfactory to the Bank pursuant to which the Lease or Leases referred to therein together with any and all Lease Security therefor are assigned to the Bank as security subject to this Agreement, and the Goods covered by such Lease or Leases are likewise made subject to this Agreement.
- b. "Collateral" means all property in which a security interest is granted hereunder.
- c. "Goods" means the personal property described in Exhibit "A" attached hereto leased under a Lease, together with all accessories, attachments, parts and repairs now or hereafter incorporated in or affixed to or used in connection with any such Goods, and includes goods substituted for the original Goods leased under a Lease and Goods that may be added to a Lease.
- d. "Lease" means any lease of which Lessor is the lessor (or an assignee of the lessor) and which is identified in an Assignment.
- e. "Lease Security" means each and every guaranty, security interest, mortgage, or other security securing the payment and performance of the Lessee's obligations under a Lease.
- f. "Lessee" means the lessee or lessees of a Lease.
- g. "Obligations" means each and every debt, liability or obligation which Lessor may now or hereafter owe to the Bank, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, absolute or contingent, due or to become due, primary or secondary, liquidated or unliquidated, recourse or nonrecourse or joint, several or joint and several including, without limitation, that certain promissory note of even date herewith executed by the Lessor and payable to the order of the Bank in the original principal amount of \$1,500,000 together with all renewals, extensions and modifications thereof.

- h. "Rent" means with respect to each Lease all moneys due or to become due under such Lease.
  
- 2. **Security Interest.** As security for the payment of all Obligations, Lessor hereby grants to the Bank a security interest in (i) all Goods, (ii) all Leases and all of Lessor's rights thereunder, including the right to receive Rent and the right to exercise the Lessor's rights and remedies upon a default thereunder, (iii) all Lease Security and (iv) proceeds of any and all of the foregoing.
  
- 3. **Representation and Covenants of Lessor.** Lessor represents, warrants and covenants that:
  - a. The execution, delivery and performance of this Agreement and of each of the Leases has been duly authorized by all necessary action on the part of the Lessor and will not violate any provision of the Lessor's articles of incorporation or bylaws or any agreement or instrument to which it is a party or by which it is bound.
  
  - b. Lessor has good and marketable title to the Leases free and clear of all security interests, liens, and other encumbrances and rights, and either Lessor has good and marketable title to the Goods free and clear of all security interests, liens, and other encumbrances and rights (other than those of the Lessees) or, with respect to any Lease that is deemed an installment sale or loan, Lessor has a perfected first security interest in the Goods covered by such Lease securing the Lessee's obligations under such Lease.
  
  - c. Without the prior written consent of the Bank which consent shall not be unreasonably withheld, Lessor will not sell, transfer, or encumber any item of Collateral, and will not agree to any early termination of a Lease unless pursuant to a contractual obligation to do so contained in the Lease.
  
  - d. Each of the Leases complies with all applicable usury laws, retail installment sales acts, truth-in-lending and truth-in-leasing laws and regulations and all other applicable local, state and federal laws and regulations.
  
  - e. The signature by or on behalf of the Lessee of each Lease is the genuine signature of the person whose signature it purports to be; if the Lessee is a corporation or partnership, the execution, delivery, and performance by the Lessee of the related Lease has been duly authorized by all necessary corporate or partnership action, as the case may be; each Lease is legally valid and enforceable against the Lessee; the unpaid Rent thereon and any Lease Security therefor is and will be as represented to the Bank at the time of assignments; each Lease and any Lease Security therefor is and will be at the time of assignment free of any special arrangement or understanding or separate agreement regarding an option to purchase, the Rent, or any other matter contemplated by or related

to the Lease and the Lease Security therefor except as disclosed to the Bank in writing prior to assignment; and at the time of assignment no event of default has occurred and is continuing thereunder and no event has occurred and is continuing which with notice or lapse of time or both would constitute an event of default thereunder.

- f. Without the prior written consent of the Bank which consent shall not be unreasonably withheld, Lessor will not modify, amend, waive Lessee's performance under, anticipate the Rent under, or release or accept the surrender of, any Lease or any Lease Security. Lessor shall perform all of its duties and obligations under the Leases, and keep accurate books, records and accounts with respect to the Leases.
- g. Lessor will deliver to the Bank the original of any Lease or Leases assigned hereunder, and will not execute any copies of any Lease other than a copy only for delivery to the Lessee named in such Lease and so designated as "Client's Copy", and one to be held by Lessor so designated as "Lessor's Copy". If the Bank permits any Lease stamped "original" to be left in the possession of Lessor, Lessor will deliver to the Bank upon request proof satisfactory to the Bank of the existence of any such Lease and will permit the Bank to stamp any such Lease with a legend reflecting the Bank's interest therein. In the case of a master lease, the original of the Lease shall mean the Lease stamped "original", plus an original or certified copy of the related master lease.
- h. As of the date a Lease is assigned to the Bank hereunder, the related Goods have been delivered and accepted by the Lessee and the Lessee has acknowledged receipt and acceptance of the Goods leased to it. Upon request by the Bank, Lessor will cause such Goods to be stamped or otherwise labeled reflecting that Lessor is the owner of such Goods.
- i. Lessor will maintain the Goods, or cause the Goods to be maintained, in good condition and repair, ordinary wear and tear excepted.
- j. Lessor will pay, or cause to be paid, all personal property and other taxes levied or assessed against the Goods prior to the date on which penalties attach thereto.
- k. Lessor will procure and maintain, or cause to be procured and maintained, insurance issued by responsible insurance companies insuring the Goods against damage and loss by theft, fire, collision and such other risks as are usually carried by owners of similar properties or as may be requested by the Bank, in such amounts and payable in such manner as the Bank shall request (including naming the Bank as a loss payee) and will furnish evidence of such insurance to the Bank upon request.

- l. All tangible Collateral shall at all times remain within the contiguous 48-states of the United States, Mexico and Canada; provided, however, that usage in Mexico shall be incidental and limited in duration.
- m. Lessor will permit the Bank to examine Lessor's books and records with respect to the Collateral and make extracts therefrom and copies thereof at any time and from time to time, and Lessor will furnish such information and reports to the Bank regarding the Collateral as the Bank may from time to time request. Lessor will also permit the Bank to inspect the Goods at any time and from time to time as the Bank may reasonably request.
- n. Lessor will execute, from time to time, such financing statements, assignments, and other documents covering the Collateral, including proceeds, as the Bank may reasonably deem appropriate in order to perfect its security interest in the Collateral (including Lease Security acquired by Lessee after the related Lease has been assigned to the Bank hereunder); will pay the cost of filing the same in all public offices in which the Bank may deem filing to be appropriate; will disclose upon request by the Bank the name of the record owner and the legal description of any real property to which any Goods may be deemed fixtures; and will notify the Bank promptly upon acquiring any Lease Security for a Lease previously assigned to the Bank hereunder.
- o. Upon request by the Bank, Lessor will file a financing statement or statements naming as debtor such Lessee or Lessees as may be designated by the Bank, and will assign Lessor's rights under any such financing statement to the Bank.

4. **Collection of Rent and Sale Proceeds.** The Bank may at any time (whether before or after the occurrence of an Event of Default) notify any Lessee that its Lease has been assigned to the Bank for security. Upon the occurrence of an Event of Default, the Bank may notify any Lessee that all Rent payable thereunder shall be paid directly to the Bank. The Bank may also direct Lessor to so notify any Lessee, and Lessor agrees to follow any such direction. No such payment of Rent shall constitute payment of any Obligation until the Bank receives good funds therefor. In the event Lessor fails to endorse any instrument given in payment of Rent, the Bank is hereby irrevocably authorized to endorse the same on Lessor's behalf.

Proceeds from the sale of Goods and insurance proceeds from a casualty to Goods shall be paid to the Bank for application to the Obligations as the Bank may in its discretion determine.

5. **Assignment of Insurance.** Lessor hereby assigns to the Bank, as additional security for payment of the Obligations, any and all moneys due or to become due under, and all other rights of Lessor with respect to, any and all policies of insurance covering the Collateral, and Lessor hereby directs the issuer of any such policy to pay any such moneys directly to the Bank. Both before and after an Event of Default, the Bank may (but need not) in its own name or in

Lessor's name execute and deliver proofs of claim, receive such moneys, endorse checks and other instruments representing such moneys, and settle or litigate any claim against the issuer of any such policy.

6. **Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" hereunder: (a) any event of default, as defined in that certain Term Loan Agreement ("Term Loan Agreement") of even date herewith between the Lessor and Bank, as may be amended, modified or replaced from time to time; (b) any breach of any one or more of the representations and warranties of Lessor hereunder; or (c) in the event Lessor fails to observe or perform any one or more of the covenants and agreements to be observed and performed by Lessor hereunder.

7. **Rights and Remedies on Default.** Upon the occurrence of an Event of Default, and at any time thereafter, the Bank may exercise any one or more of the following rights and remedies:

- a. declare all Obligations to be immediately due and payable, as provided in the Term Loan Agreement;
- b. in a commercially reasonable manner, exercise any of the rights and remedies available to it under this Agreement, the Uniform Commercial Code, or any other applicable law, to foreclose or otherwise enforce its security interest granted hereunder in the Collateral, and in connection therewith, the Bank may require Lessor at Lessor's expense to assemble the Goods (subject to the rights, if any, of the Lessee) and make them available to the Bank at a place to be designated by the Bank which is reasonably convenient to both parties, and any notice of intended disposition of any of the Collateral required by law shall be deemed reasonable if such notice is mailed or delivered to Lessor at its address and is shown on the Bank's records at least ten days before the date of such disposition;
- c. exercise any other rights and remedies available to it by law or by agreement, including the rights of the Bank under the Term Loan Agreement and the rights of the Lessor under any Lease or any Lease Security therefore.

8. **Miscellaneous.**

- a. The Bank does not in any way assume any of Lessor's obligations under any of the Leases, and Lessor hereby agrees to indemnify the Bank against all liability arising in connection with or on account of any of the Leases or any of the Goods. There are no third party beneficiaries to this Agreement.
- b. If Lessor fails to observe or perform any covenant or agreement contained in this Agreement the Bank may, in addition to any other remedy, take whatever action may be necessary to remedy such failure and should any such action require the

expenditure of money to protect and preserve the Bank's security interest in the Collateral (including payment of insurance premiums and taxes and removal of liens), the amount of such expenditure shall become forthwith due and payable by Lessor with interest at the highest rate of interest then being paid on the Obligations or allowed by law (whichever is less) and shall be secured by the security interest granted hereunder.

- c. The Bank shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or document signed by Lessor unless such waiver be in writing and signed by the Bank. No delay or omission on the part of the Bank in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion.
- d. All rights and remedies of the Bank shall be cumulative and may be exercised singularly or concurrently, at the Bank's option, and the exercise or enforcement of any one such right or remedy shall not bar or be a condition to the exercise or enforcement of any other.
- e. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State in which the Bank is located.
- f. The Bank may sign this Agreement if it chooses (for the purpose of filing or otherwise), but this Agreement shall be valid and effective and enforceable against Lessor if signed by Lessor even though not signed by the Bank. A carbon, photographic or other reproduction of this Agreement is sufficient as a financing statement.
- g. Lessor agrees to pay legal fees and expenses incurred by the Bank in the exercise of any right or remedy available to it under this Agreement.
- h. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Lessor and the Bank.
- i. This Agreement is given in connection with the Term Loan Agreement, which shall govern and control to the extent of any inconsistent or conflicting provisions with the terms and conditions of this Agreement.
- j. If Lessor has failed to observe or perform any covenant or agreement contained in this Agreement, the Bank is authorized to grant or agree to any extension, renewal, forbearance, amendment, settlement, or a lease with respect to any Lease or any Lease Security without notice to Lessor. The Lessor hereby consents to any such action taken by the Bank without notice to Lessor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

COMMUNITY FIRST NATIONAL BANK,  
N.A.

By *Alean Reem*

Its *Assistant Vice President*

WESTERN RAILROAD EQUIPMENT  
COMPANY

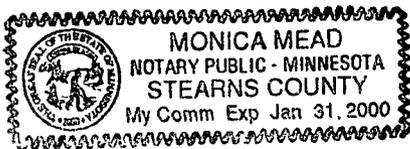
By *Kent Shoemaker*

Its *Chairman*

Acknowledgment

STATE OF *MINN* )  
 )ss.  
COUNTY OF *STEARNS* )

On this *22nd* day of *October*, 1996, before me personally appeared *Kent Shoemaker*, to me personally known, who being by me duly sworn, says that (s)he is the *CHAIRMAN* of Western Railroad Equipment Company, a Minnesota corporation, that the instrument was signed on behalf of the corporation by the authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of the corporation.



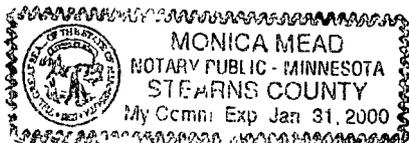
*Monica Mead*  
, Notary Public  
State of *Minnesota*  
My commission expires:  
*January 31, 2000*

[Signatures continued]

Acknowledgment

STATE OF MN )  
 )ss  
COUNTY OF STEARNS )

On this 22nd day of October, 1996, before me personally appeared Dean Reese, to me personally known, who being by me duly sworn, says that (s)he is the ASSISTANT Vice President of Community First National Bank, a national banking association, that the instrument was signed on behalf of the association by the authority of its Board of Directors, and that (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of the association.



Monica Mead  
, Notary Public

State of Minnesota  
My commission expires: January 31, 2000

<u>RAILROAD</u> <u>CAR TYPE</u>	<u>CAR</u> <u>NUMBER</u>	<u>AAR</u> <u>CAR CODE</u>	<u>AAR</u> <u>MECH. DESIGN.</u>
Covered Hopper Car	PLMX 20022	C414	LO
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Covered Hopper Car	PLMX 20027	C414	LO
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Covered Hopper Car	PLMX 2016	C414	LO
Covered Hopper Car	PLMX 2017	C414	LO
Covered Hopper Car	PLMX 2018	C414	LO

EXHIBIT "A"