A-242

0360

JUN 1976

COUNTERPART
No. 4 of 14

CONDITIONAL SALE AGREEMENT

Dated as of

June 7, 1976

Between

NORTH WESTERN LEASING COMPANY, Seller

and

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, Buyer

For the Purchase of

350 Used Box Cars

AGREEMENT AND ASSIGNMENT

Dated as of

June 7, 1976

Between

NORTH WESTERN LEASING COMPANY, Assignor

and

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, Assignee

CONDITIONAL SALE AGREEMENT, dated as of June 7, 1976, by and between NORTH WESTERN LEASING COMPANY, a corporation organized under the laws of the State of Delaware (hereinafter called "Leasing Company" or the "Seller"), CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a corporation organized under the laws of the State of Delaware (hereinafter called the "Railroad");

WHEREAS, the Seller has agreed to sell and deliver to the Railroad and the Railroad has agreed to purchase the railroad equipment described in Schedule A hereto (hereinafter called the "Equipment");

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the parties hereto do hereby agree as follows:

1. Sale. The Seller will sell and deliver to the Railroad, and the Railroad will purchase from the Seller and accept delivery of, and pay for, as hereinafter provided, each unit of the Equipment.

2. Delivery. The Seller will deliver the units of the Equipment to the Railroad ready for service and free of all liens, encumbrances and claims of any nature except as provided in this Agreement, with freight charges prepaid at such place or places and at such time or times as the Railroad shall designate. The Railroad shall not be bound under this Agreement to accept delivery of any unit after December 31, 1976 and any unit not delivered, accepted and settled for hereunder on or before that date shall not be included in the term "Equipment" as used in this Agreement. On delivery of each unit of the Equipment hereunder the Railroad will assume with respect thereto the responsibilities and risk of loss.

3. Purchase Price and Payment. The base price per unit of Equipment is set forth in Schedule A, and shall be subject to increase or decrease due to modification of specifications, additions, deletions or freight charges agreed upon in writing prior to delivery, and the term "Price" as used herein shall mean the base price as so increased or decreased as set forth in the invoice therefor delivered to the Railroad by the Seller. The Equipment delivered to and accepted by the Railroad hereunder shall be settled for on one or more Closing Dates (hereinafter defined) (the Equipment settled for on each Closing Date being hereinafter called a "Group").

The Railroad hereby promises to pay to the Seller at the office of the Seller or at such bank in Chicago, Illinois as the Seller may designate, the aggregate Price of the Equipment delivered to and accepted by the Railroad hereunder, and interest, as follows:

(a) On the Closing Date with respect to each Group, the Railroad shall pay an amount equal to at least twenty per cent (20%) of the aggregate Price of all units of Equipment in such Group.

(b) The Railroad shall pay the balance of the aggregate Price of all units of Equipment settled for hereunder in forty (40) substantially equal quarterly installments payable on March 15, June 15, September 15, and December 15 of each year commencing March 15, 1977 to and including December 15, 1986 (subject to the privilege of prepayment as hereinafter provided).

(c) The indebtedness hereunder for the unpaid balance of the aggregate Price of the units of Equipment in each Group shall bear interest from the Closing Date for such Group, and the Railroad shall pay such interest quarterly on March 15, June 15, September 15, and December 15 of each year (such dates being hereinafter called the "Interest Payment Dates") as follows: (i) on the first Interest Payment Date following such Closing Date, interest accrued from and including such Closing Date to but not including such Interest Payment Date at the rate per annum of one hundred and seven per cent (107%) of the Prime Rate (as hereinafter defined) in effect on such Closing Date; and (ii) on each Interest Payment Date thereafter, interest accrued from and including the preceding Interest Payment Date at the rate per annum for each quarter or fraction thereof of 107% of the Prime Rate in effect on the preceding Interest Payment Date. The term "Prime Rate" means the rate per annum charged by Continental Illinois National Bank and Trust Company of Chicago for 90 day unsecured commercial loans to large corporate borrowers of the highest credit standing.

The Railroad shall have the privilege of prepaying its indebtedness hereunder or any installment thereof, at any time without penalty or premium, and each prepayment shall be applied to reduce installments in inverse order of maturity thereof. The Railroad shall pay simultaneously with any prepayment pursuant to this paragraph all unpaid interest, if any, upon the principal amount then to be prepaid, but only to the extent accrued to the date of prepayment.

The term "Closing Date" with respect to a Group for which settlement is to be made shall mean such date (not later than December 31, 1976), not more than fifteen (15) days following presentation by the Seller to the Railroad of the invoice for such Group, as shall be fixed by the Railroad by written notice delivered to the Seller at least three (3) business days prior to the Closing Date designated therein.

Interest under this Agreement shall be determined on the basis of a 365 (or 366) day year. The Railroad will pay interest at the rate of three-fourths of one per cent (3/4 of 1%) over the higher of the two interest rates payable under and as determined in Section 3(c) of this Agreement on all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms of this Agreement.

4. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Seller in respect of taxes (other than income taxes, gross receipt taxes, franchise taxes, excess profits taxes and similar taxes), which expense the Railroad assumes and agrees to pay on demand, in addition to the Price of the Equipment.

5. Title to the Equipment. Leasing Company and the Railroad may enter into other conditional sale agreements or may enter into leases for the purchase or lease by the Railroad of railroad equipment, and the Railroad may cause Continental Illinois National Bank and Trust Company (hereinafter called the "Assignee"), pursuant to an Agreement dated as of January 1, 1976 among the Railroad, Leasing Company and the Assignee, to acquire by assignment from the Leasing Company its interest in such equipment and conditional sale agreements and in the Equipment and this Agreement, or to make loans to Leasing Company secured by security agreements and the leased equipment described therein (such conditional sale agreements and security agreements being hereinafter called the "Related Agreements"). In consideration for Leasing Company's entering into this Agreement and each of the Related Agreements, and for the Assignee's entering into the related assignments and making loans to Leasing Company in respect of the leased equipment, the Railroad agrees that the Equipment shall be security for the indebtedness and other obligations of the Railroad and Leasing Company under all the Related Agreements, and the Railroad does hereby grant to Leasing Company prior to any assignment of this Agreement to the Assignee and to the Assignee after such assignment (the grantee being in each such case defined as the "Seller," as provided in Section 26 hereof) a security interest in the Equipment to secure the payment of the indebtedness and performance of the obligations of the Railroad and Leasing Company, as the case may be, under each Related Agreement in accordance with the terms thereof as though the Equipment were part of the equipment described therein; provided, however, that if the Railroad or Leasing Company is indebted to the Assignee under

any Related Agreement at any time after the Railroad shall have paid under this Agreement the full indebtedness in respect of the Price of all units of the Equipment, and any such unit suffers a Casualty Occurrence (as defined in Section 7 hereof) or is disposed of by the Railroad in the ordinary course of business, no deposit, prepayment or additional security shall be required under Section 7 or otherwise, and, provided there is then no existing default under any Related Agreement, the Seller's security interest in such unit shall be deemed to be terminated and released upon such disposition or occurrence and absolute title to and property in such unit shall pass to and vest in the Railroad without further transfer or action on the part of the Seller, except that the Seller, if requested by the Railroad, will execute a bill of sale or instrument in writing as may be necessary or appropriate to make clear upon the public records the title of the Railroad to such unit.

The Seller shall retain the full legal title to and property in each unit of the Equipment delivered to the Railroad hereunder until the Railroad and Leasing Company shall have made all their payments and shall have performed all their obligations hereunder and under the Related Agreements. When and only when the Seller shall have been paid the full indebtedness in respect of the Price of all the Equipment and in respect of the price of the equipment described in the Related Agreements, together with interest and all other payments as herein and in the Related Agreements provided, and when the Railroad and Leasing Company shall have performed all of their obligations under this Agreement and under the Related Agreements, absolute title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Seller, except that the Seller, if requested by the Railroad, will execute a bill of sale or instrument in writing as may be necessary or appropriate to make clear upon the public records the title of the Railroad to the Equipment.

6. Marking of Equipment. The Railroad will cause each unit of the Equipment delivered to it to be kept numbered with its identifying number as set out in Schedule A hereto, and will cause each side of each such unit to be kept plainly, distinctly, permanently and conspicuously marked with the name of the Seller followed by the word "Owner" or other appropriate words designated by the Seller, with appropriate

changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Seller to the Equipment and its rights under this Agreement. The Railroad will not place any unit of the Equipment which shall have been delivered to it hereunder in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such marking, which may be removed, defaced or destroyed. The Railroad will not change the numbers of any such units except with the consent of the Seller and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Seller by the Railroad and, if such units are rolling stock, shall promptly be filed and recorded by the Railroad with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered "Chicago and North Western," or "C.N.W.," or may label the Equipment with the emblem, trademark, or slogan of the Railroad, or may letter the Equipment with the name or initials of any affiliated railroad company which is permitted to use such Equipment as hereinafter provided, or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

7. Lost, Destroyed or Damaged Equipment. In the event that any unit of the Equipment shall be worn out, lost, destroyed or, in the opinion of the Railroad, irreparably damaged or otherwise rendered unsuitable or unfit for use from any cause whatsoever, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (hereinafter called a "Casualty Occurrence") prior to full payment hereunder of the indebtedness and interest incurred under this Agreement only, the Railroad shall notify the Seller within thirty days after it has determined that a unit has suffered a Casualty Occurrence.

The Railroad shall, within thirty days of such notification, deposit with the Seller an amount equal to the then unpaid indebtedness in respect of the Price of the Equipment multiplied by the ratio having for its numerator the Price of the unit or units suffering a

Casualty Occurrence and for its denominator the aggregate Price of all units of the Equipment. The Seller, upon receipt of such deposit, shall cease to have any interest in such unit or units suffering a Casualty Occurrence, and absolute title to and property in such unit or units shall thereupon pass to and vest in the Railroad without further transfer or action on the part of the Seller, except that the Seller, if requested by the Railroad, will execute a bill of sale or instrument in writing as may be necessary or appropriate to make clear upon the public records the title of the Railroad to such unit or units.

Such deposit may be applied at any time at the option of the Railroad (i) to the prepayment of installments of indebtedness without penalty or premium, as provided in Section 3(b) of this Agreement, or (ii) to the purchase of other railroad equipment (new or used), other than automobile racks, maintenance equipment, machines or other non-rolling stock equipment (unless otherwise approved in writing by the Seller) for substitution for units suffering a Casualty Occurrence. Equipment substitutions shall be of substantially as good construction, material and character as, and shall have an aggregate value as of the date of substitution not less than the aggregate fair value in good repair as of the date of substitution of the units suffering a Casualty Occurrence. The fair value of any unit of Equipment in good repair as of the date of substitution, for purposes of this Section 7, shall be deemed to be the Price thereof less an amount representing depreciation to the date of substitution as determined by the method in use at the time in standard railroad practice, and shall be evidenced by a certificate signed by an officer of the Railroad and delivered to the Seller.

Title to such equipment substitutions for units suffering a Casualty Occurrence shall be vested in the Seller free from all liens and encumbrances, and shall be subject to all the terms and conditions of this Agreement in all respects as though part of the original equipment herein described.

Pending prepayment of indebtedness or purchase of substitute railroad equipment the Seller shall, upon request and at the direction of the Railroad, invest monies received by it under provisions of this Section 7 in:

(a) Bills, notes, bonds, or other obligations for which the faith of the United States Government is pledged to provide for payment of interest and principal.

(b) Certificates of time deposit of commercial banks having an aggregate capital and surplus of $50,000,000 or more.

(c) Commercial paper rated prime by a national credit agency.

(d) Other investments if approved in writing by the Seller.

Any interest or gain produced by such investment shall accrue to and be paid to the Railroad. In the event that the market value of such investments should decline, the Seller may require Railroad to deposit additional monies equivalent to the difference between the cost and market value of the investments.

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

9. Seller's Warranty of Material and Workmanship. The Seller warrants that the Equipment will be free from defects in materials and workmanship and that the Seller will replace any part or parts which shall fail under normal care and service within one (1) year after the date of delivery.

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

11. Inspections. The Seller shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto.

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

13. Prohibition against Liens. The Railroad will satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Seller thereto; except that the Railroad 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 Seller, adversely affect the property or rights of the Seller in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Seller in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

14. Railroad's Indemnities. The Railroad agrees to indemnify and save harmless the Seller from and against all losses, damages, injuries, liabilities, claims and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Seller of title to the Equipment or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Seller. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect to the Price and the conveyance of the Equipment, as provided in Section 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all of the Equipment; provided, however, that the Seller shall not be relieved from its warranty covering material and workmanship hereinbefore in Section 9 set forth.

15. Patent Indemnities. Except in cases of design, articles and materials specified by the Railroad, the Seller agrees to indemnify and hold harmless the Railroad from and against any and all liability, charges and expenses, including royalty payments and counsel fees in any manner imposed upon or accruing against the Railroad or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof of any device, apparatus, design, article or material which infringes, or is claimed to infringe, on any patent or other similar right.

The Seller agrees to, and hereby does to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Seller has or hereafter shall have against the seller or sellers of any devices, apparatuses, designs, articles or materials purchased or otherwise acquired by the Seller for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such device, apparatus, design, article or material or operation thereof infringes or is claimed to infringe on any patent or other similar right.

16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Seller. An assignment or transfer to a railroad company or other purchaser which shall acquire or lease all or substantially all the lines of railroad of the Railroad and which, by execution of an appropriate instrument satisfactory to the Seller, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, or an assignment by the Railroad to one of its wholly owned subsidiary companies, shall not be deemed a breach of this covenant, provided that the Railroad (with binding effect upon successors of the Railroad) agrees not to be released as a primary obligor for the payment of principal and interest when due and payable (whether by acceleration or otherwise) on indebtedness outstanding hereunder on the date of any such assignment or transfer.

All or any of the rights, benefits and advantages of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Seller and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Seller from, any of the obligations of the Seller to deliver the Equipment in accordance herewith or to respond to its guaranties, warranties and indemnities contained in Sections 9 and 15 hereof, or relieve the Railroad of its obligations to the Seller under Sections 2, 4 and 14 hereof, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Seller's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment.

From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of manufacturers or seller of railroad equipment to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Seller hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Seller hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Seller as hereinbefore provided the rights of such assignee to the entire unpaid Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller in respect of the Equipment or the delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to 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 Seller. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Seller.

In the event of any such transfer or assignment, or successive transfers or assignments by the Seller, of title to the Equipment and of the Seller's rights hereunder in respect thereof, the Railroad will, whenever requested by such transferee or assignee, change the marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking with respect to the first assignee of Seller's rights under this Agreement shall be borne by the Railroad. Such costs with respect to any subsequent assignment will be borne by the subsequent transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a unit or group of Equipment subsequent to such transfer or assignment, deliver to each assignee or transferee of any of the Equipment included

in such agroup all documents required by the terms of such transfer or assignment to be delivered to such assignee or transferee in connection with such settlement.

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

(a) The Railroad shall fail to pay in full, when due and payable hereunder, any sum payable by Railroad as herein provided in respect of the Price of the Equipment or for interest and such failure shall continue for more than five (5) business days after written notice from the Seller; or

(b) The Railroad shall, for more than thirty (30) days after the Seller shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed or to make provision satisfactory to the Seller for such compliance; or

(c) A proceeding in reorganization, bankruptcy or insolvency is instituted by or against the Railroad or its property and, unless such proceeding is dismissed within sixty (60) days, stayed or otherwise rendered ineffective, the debtor in reorganization or any trustee or receiver appointed therein fails to adopt and become bound by the terms, provisions and conditions of this Agreement within sixty (60) days after such appointment or designation; or the Railroad makes an assignment for the benefit of its creditors;

(d) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right of possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Seller may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Seller, declare the entire unpaid portion of the Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the Price and accrued and unpaid interest shall bear interest from the date of such declaration

at the rate of three-fourths of one per cent (3/4 of 1%) over the higher of the two interest rates payable under and as determined in Section 3(c) of this Agreement, to the extent legally enforceable, and the Seller shall thereupon be entitled to recover judgment for the entire unpaid balance of the Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

18. Remedies. If the Railroad shall make default as hereinbefore provided, then at any time after the entire indebtedness in respect of the Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Seller, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Seller, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 18 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

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

If the Railroad shall make default as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided, the Seller (after retaking possession of the Equipment as hereinbefore in this Section 18 provided) may at its election, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Seller shall deem fit (including, if the Seller so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate; provided, however, that, if the Railroad within twenty (20) days of receipt of notice of the Seller's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Seller the total unpaid balance of the indebtedness in respect of the Price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due under this Agreement, and under all the Related Agreements (as defined in Section 5 hereof), then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Seller, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Seller may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorney's fees and any other expenses incurred by the Seller in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Seller under the provisions of this Agreement and any Related Agreement. Written notice of the Seller's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Section 23 hereof, at any time during a period of thirty (30) days after the entire indebtedness in respect of the Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Seller shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 18.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Seller may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such

manner as the Seller may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Section 23 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Seller may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 18), and in payment of the purchase price therefor the Seller shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Seller from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Seller shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Seller. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Seller in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein.

If, after applying all the sums of money realized by the Seller under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Seller upon demand, and, if the Railroad shall fail to pay such deficiency, the Seller may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Seller, there shall remain a surplus in the possession of the Seller, such surplus shall be paid to the Railroad.

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

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

19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

21. Recording. The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Seller for the purpose of proper protection, to the satisfaction of counsel for the Seller, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Seller certificates or other evidences of such filing and recording satisfactory to the Seller.

22. Payment of Expenses. The Railroad will pay all reasonable costs, charges, and expenses, except the counsel fees of the Seller and of assignees of this Agreement, and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Seller of this Agreement, of any instrument supplemental to or amendatory of this Agreement or such

first assignment and of any certificate of the payment in full of the indebtedness in respect of purchase price due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses including stamp and other taxes, if any, of the first assignee of this Agreement and of any parties acquiring interests in such first assignment incurred in connection with such first assignment and payments to the Seller by such first assignee.

23. Notice. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at Chicago and North Western Transportation Company, 400 West Madison Street, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Seller by the Railroad. Any notice hereunder to the Seller shall be deemed to be properly served if delivered or mailed to the Seller at 400 West Madison Street, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Railroad by the Seller. Any notice hereunder to any assignee of the Seller or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Seller, as the case may be, by such assignee.

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

25. Effect and Modification of Agreement. This Agreement exclusively and completely states the rights of the Seller and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Seller and the Railroad.

26. Definitions. The term "Seller," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, North Western Leasing Company, and any successor or successors for the time being to its properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained and excluded from any assignment.

27. Execution. This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart.

Although this Agreement is dated for convenience as of the date 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.

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

NORTH WESTERN LEASING COMPANY

By _____
Vice President

(SEAL)

ATTEST:

_____
Assistant Secretary

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

By _____
Vice President

(SEAL)

ATTEST:

_____
Assistant Secretary

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 7th day of June, 1976 before me personally appeared J. M. Butler to me personally known, who, being by me duly sworn, says that he is the Vice President 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 the Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of such corporation.

(NOTARIAL SEAL) Notary Public

My Commission expires:

May 21, 1978

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 7th day of June, 1976 before me personally appeared J. M. Butler to me personally known, who, being by me duly sworn, says that he is a Vice President of the CHICAGO AND NORTH WESTERN TRANSPORTATION 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.

(NOTARIAL SEAL) Notary Public

My Commission expires:

May 21, 1978

SCHEDULE A

CONDITIONAL SALE AGREEMENT
Dated as of June 7, 1976

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars	CNW24720	$ 7,072
		CNW24722	7,072
		CNW24723	7,072
		CNW24725	7,072
		CNW24726	7,072
		CNW24728	7,072
		CNW24729	7,072
		CNW24731	7,072
		CNW24732	7,605
		CNW24739	7,072
		CNW24741	7,072
		CNW24742	7,072
		CNW24743	7,072
		CNW24744	7,072
		CNW24745	7,072
		CNW24746	7,072
		CNW24747	7,072
		CNW24748	7,072
		CNW24753	7,072
		CNW24754	7,072
		CNW24755	7,072
		CNW24759	7,072
		CNW24761	7,072
		CNW24762	7,072
		CNW24763	7,072
		CNW24767	7,072
		CNW24769	7,072
		CNW24770	7,495
		CNW24771	7,072
		CNW24773	7,072
		CNW24775	7,072
		CNW24778	7,072
		CNW24780	7,072
		CNW24781	7,072
		CNW24784	7,072
		CNW24785	7,072
		CNW24787	7,072
		CNW24789	7,072
		CNW24791	7,072
		CNW24792	7,072
		CNW24794	7,072
		CNW24797	7,072
		CNW24798	7,530
		CNW24802	7,072
		CNW24804	7,072

SCHEDULE A

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW24805	$ 7,072
		CNW24807	7,072
		CNW24808	7,072
		CNW24809	7,072
		CNW24810	7,605
		CNW24811	7,072
		CNW24815	7,072
		CNW24817	7,072
		CNW24819	7,072
		CNW24820	8,448
		CNW24821	7,072
		CNW24822	7,072
		CNW24823	7,463
		CNW24824	7,072
		CNW24825	7,072
		CNW24826	7,072
		CNW24827	7,072
		CNW24828	7,072
		CNW24831	7,072
		CNW24832	7,072
		CNW24838	7,072
		CNW24839	7,072
		CNW24840	7,072
		CNW24843	7,072
		CNW24845	7,072
		CNW24846	8,448
		CNW24847	7,072
		CNW24849	7,072
		CNW24850	8,448
		CNW24853	7,072
		CNW24855	7,072
		CNW24856	7,072
		CNW24860	7,072
		CNW24861	7,618
		CNW24863	7,072
		CNW24864	7,072
		CNW24865	7,072
		CNW24866	7,072
		CNW24871	7,100
		CNW24872	7,100
		CNW24874	7,100
		CNW24875	7,100
		CNW24876	7,100
		CNW24878	7,100
		CNW24879	7,100
		CNW24882	7,100
		CNW24883	7,100
		CNW24884	7,100
		CNW24885	8,481

SCHEDULE A

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW24886	$ 7,100
		CNW24889	7,100
		CNW24890	7,100
		CNW24891	7,100
		CNW24892	7,100
		CNW24897	7,100
		CNW24899	7,100
		CNW24901	7,072
		CNW24902	7,072
		CNW24904	7,100
		CNW24908	7,100
		CNW24910	7,100
		CNW24912	7,100
		CNW24913	7,492
		CNW24914	7,100
		CNW24916	7,100
		CNW24919	7,100
		CNW24920	7,100
		CNW24921	7,100
		CNW24922	7,100
		CNW24927	8,481
		CNW24928	7,100
		CNW24929	7,100
		CNW24930	7,100
		CNW24932	7,777
		CNW24933	7,100
		CNW24935	7,100
		CNW24938	7,100
		CNW24939	7,100
		CNW24941	8,481
		CNW24945	7,100
		CNW24947	7,100
		CNW24948	7,100
		CNW24950	7,100
		CNW24952	7,100
		CNW24954	7,100
		CNW24955	7,100
		CNW24956	7,100
		CNW24957	8,481
		CNW24958	8,481
		CNW24960	7,100
		CNW24963	7,100
		CNW24964	7,100
		CNW24965	7,100
		CNW24967	7,100
		CNW24972	7,100
		CNW24975	7,100
		CNW24976	7,100
		CNW24977	7,100
		CNW24979	7,100

SCHEDULE A

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW24980	$ 7,100
		CNW24981	7,100
		CNW24983	7,100
		CNW24987	7,100
		CNW24990	7,100
		CNW24991	7,100
		CNW24992	7,100
		CNW24994	7,100
		CNW24995	7,100
		CNW24996	7,100
		CNW24997	7,630
		CNW24998	7,100
		CNW25000	7,100
		CNW25002	7,100
		CNW25003	7,100
		CNW25004	7,100
		CNW25005	7,100
		CNW25006	7,100
		CNW25007	7,100
		CNW25008	7,100
		CNW25009	7,100
		CNW25010	7,100
		CNW25012	7,100
		CNW25013	7,100
		CNW25014	7,172
		CNW25015	7,100
		CNW25018	7,100
		CNW25021	7,100
		CNW25022	7,100
		CNW25023	7,100
		CNW25024	7,100
		CNW25025	7,100
		CNW25026	7,100
		CNW25027	7,100
		CNW25028	7,100
		CNW25029	7,100
		CNW25031	7,100
		CNW25034	7,100
		CNW25035	7,100
		CNW25037	7,100
		CNW25038	7,100
		CNW25042	7,100
		CNW25043	7,100
		CNW25044	7,377
		CNW25045	7,100
		CNW25047	7,100
		CNW25048	7,100
		CNW25051	7,100
		CNW25052	7,100
		CNW25055	7,100

SCHEDULE A

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW25056	$ 7,100
		CNW25057	7,100
		CNW25058	7,100
		CNW25059	7,100
		CNW25060	7,100
		CNW25061	7,100
		CNW25064	7,100
		CNW25065	7,100
		CNW25067	7,100
		CNW25069	7,100
		CNW25070	7,100
		CNW25071	7,100
		CNW25074	7,100
		CNW25075	7,100
		CNW25076	7,100
		CNW25078	7,100
		CNW25079	7,100
		CNW25080	7,100
		CNW25082	7,100
		CNW25083	7,100
		CNW25084	7,100
		CNW25085	7,100
		CNW25086	7,100
		CNW25088	7,100
		CNW25089	7,100
		CNW25091	7,100
		CNW25094	7,100
		CNW25097	7,100
		CNW25099	7,100
		CNW25100	8,481
		CNW25101	7,100
		CNW25102	7,100
		CNW25103	7,100
		CNW25105	7,100
		CNW25106	7,100
		CNW25107	7,100
		CNW25108	7,100
		CNW25112	7,100
		CNW25113	7,100
		CNW25115	7,100
		CNW25116	7,100
		CNW25117	7,100
		CNW25118	8,481
		CNW25119	7,100
		CNW25120	7,100
		CNW25122	7,685
		CNW25123	7,100
		CNW25124	7,100
		CNW25126	7,100
		CNW25127	7,100
		CNW25128	7,100

SCHEDULE A

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW25129	$ 7,100
		CNW25130	7,100
		CNW25132	7,100
		CNW25133	7,100
		CNW25134	7,100
		CNW25135	7,100
		CNW25137	7,100
		CNW25138	7,100
		CNW25140	7,100
		CNW25144	7,100
		CNW25145	7,100
		CNW25148	7,100
		CNW25149	7,100
		CNW25150	7,100
		CNW25152	7,100
		CNW25153	7,100
		CNW25154	7,100
		CNW25155	7,100
		CNW25157	7,100
		CNW25158	7,100
		CNW25159	7,100
		CNW25162	7,100
		CNW25163	7,100
		CNW25164	7,100
		CNW25165	7,407
		CNW25166	7,100
		CNW25167	7,100
		CNW25171	7,100
		CNW25172	7,100
		CNW25173	7,100
		CNW25174	7,100
		CNW25177	7,100
		CNW25178	7,100
		CNW25180	7,100
		CNW25182	7,100
		CNW25183	7,100
		CNW25185	7,100
		CNW25186	7,100
		CNW25188	7,100
		CNW25190	7,100
		CNW25191	7,100
		CNW25194	7,100
		CNW25195	7,100
		CNW25196	7,100
		CNW25197	7,100
		CNW25200	7,100
		CNW25201	7,100
		CNW25202	7,100
		CNW25203	7,100
		CNW25206	7,100
		CNW25207	7,100
		CNW25208	7,100
		CNW25209	7,100

Quantity	Description	Railroad System #	Purchase Price
350	40'6" Box Cars (Cont'd)	CNW25211	$ 7,100
		CNW25212	7,100
		CNW25214	7,100
		CNW25217	7,100
		CNW25218	7,100
		CNW25219	7,100
		CNW25220	7,100
		CNW25223	7,100
		CNW25224	7,100
		CNW25226	7,100
		CNW25228	7,407
		CNW25230	7,100
		CNW25231	7,100
		CNW25233	7,100
		CNW25234	7,655
		CNW25236	7,100
		CNW25237	7,100
		CNW25238	7,100
		CNW25241	7,100
		CNW25242	7,100
		CNW25243	7,100
		CNW25244	7,100
		CNW25248	7,100
		CNW25251	7,100
		CNW25252	7,685
		CNW25254	7,650
		CNW25255	7,100
		CNW25256	7,100
		CNW25258	7,100
		CNW25259	7,100
		CNW25260	7,100
		CNW25261	7,100
		CNW25263	7,100
		CNW25265	7,100
		CNW25269	7,100
		CNW25272	7,100
		CNW25273	8,481
		CNW25275	7,100
		CNW25276	7,100
		CNW25278	7,100
		CNW25279	7,100
		CNW25282	7,100
		CNW25283	7,100
		CNW25285	7,100
		CNW25286	7,100
		CNW25287	7,100
		CNW25288	7,100
		CNW25289	7,100
		CNW25291	7,100
		CNW25295	7,100
		CNW25298	7,777
		CNW25299	7,100
	Total		$2,506,194.00

AGREEMENT AND ASSIGNMENT, dated as of June 7, 1976, by and between NORTH WESTERN LEASING COMPANY, a corporation organized under the laws of the State of Delaware (hereinafter called the "Assignor"), and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the "Assignee");

WHEREAS, the Assignor and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of this date (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 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 the mutual covenants herein contained:

1. The Assignor hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of the Assignor in and to each unit of the Equipment when and as severally delivered and accepted and upon payment to the Assignor of the amount required to be paid by the Assignee under Section 6 hereof, and (a) all the right, title and interest of the Assignor in and to the Conditional Sale Agreement (except the right to receive the payments specified under Section 3(a) of the Conditional Sale Agreement and the right to receive payment or reimbursement for taxes paid or incurred by the Assignor as provided in Section 4 thereof), and in and to any and all amounts, other than the payments hereinabove excluded, which may be or become due or owing by the Railroad to the Assignor under the Conditional Sale Agreement on account of its indebtedness in respect of the Price 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 (b) all of the Assignor's rights, powers, privileges and remedies under the Conditional Sale Agreement; without any recourse, however, against the Assignor for or on account of the failure of the Railroad to make any of the

payments provided for in, or otherwise comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Assignor to deliver the Equipment in accordance with the Conditional Sale Agreement or any liability incidental to such delivery or in respect of its obligations contained in Sections 9 or 15 of the Conditional Sale Agreement, or relieve Railroad from its obligations to the Assignor under Sections 2, 4 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Section 16 of the Conditional Sale Agreement, all obligations of the Assignor to the Railroad in respect of 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 Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

2. The Assignor covenants and agrees that it will deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement set forth to be complied with by the Assignor. The Assignor further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment, it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Assignor further covenants and agrees that it will defend the title to such units sold by it against the demands of all persons whomsoever based on claims originated

prior to the delivery of such unit by the Assignor to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Assignee to receive from the Railroad the unpaid portion (other than the portion payable under Section 3(a) of the Conditional Sale Agreement) of the Price of the Equipment delivered to and accepted by the Railroad, and interest thereon, as well as any other rights assigned by the Assignor hereunder, shall not be subject to any defense, offset, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Assignor, or the successors to its business, in respect of the delivery of the Equipment or under Sections 9 and 15 of the Conditional Sale Agreement nor subject to any defense, offset, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Railroad by the Assignor, or the successors to its business.

The Assignor will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any device, apparatus, design, article or material which infringes, or is claimed to have infringed, on any patent or other right, except for any designs specified by the Railroad, or devices, apparatus, articles or materials specified by the Railroad and not manufactured by the Assignor.

4. The Assignor will cause each side of each unit of the Equipment to be plainly, distinctly, permanently and conspicuously marked with the following legend:

"CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, OWNER."

5. Upon request of the Assignee, its successors and assigns, the Assignor will 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.

6. The Assignee, upon each Closing Date (as defined in Section 3 of the Conditional Sale Agreement) fixed as provided in said Section 3, or as otherwise hereinafter set forth, shall pay to the Assignor by certified or bank cashier's check in Chicago Clearing House funds, an amount equal to that portion of the aggregate Price, as fixed in said Section 3, of the unit or units of Equipment in the Group (as defined in the Conditional Sale Agreement) with respect to which the closing is held on said Closing Date not required to be paid pursuant to Section 3(a) of the Conditional Sale Agreement, provided that there shall have been delivered to the Assignee a notice fixing the Closing Date for the Group and three copies of the following documents in form and substance satisfactory to Assignee's counsel:

(a) Certificate of Acceptance by the Railroad with respect to the units of Equipment in the Group. Such certificate shall state that there was plainly, distinctly, permanently and conspicuously marked on each side of each of the units in the group at the time of delivery and acceptance the following legend:

"CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, OWNER";

(b) A Bill of Sale from the Assignor to the Assignee, transferring to the Assignee title to the units of Equipment in the Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Assignor had legal title to such units and good and lawful right to sell such units and title to such units was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(c) Invoice for the unit or units of the Equipment in the Group accompanied by or having endorsed thereon a certificate by the Railroad as to the correctness of the Price of such unit or units;

(d) A favorable Opinion of Counsel for the Railroad and the Assignor, which may be the same, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a legal, valid and binding

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 constitute a default thereunder; and

(e) A receipt from the Assignor evidencing payment by the Railroad of the amount required to be paid by it pursuant to Section 3(a) of the Conditional Sale Agreement.

In giving the opinion specified in subparagraph (d) of this Section 6, 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 similar laws affecting the enforcement of creditors' rights generally; and counsel may rely, as to title to any units of used Equipment being free of claims, liens and encumbrances (except only the rights of the Railroad under the Conditional Sale Agreement), upon the opinion of counsel for the Seller and upon the opinion of counsel for the vendor from whom the Seller purchased such units.

It is understood and agreed that the Assignee shall not be required to make any payment to the Assignor in respect of any Equipment not delivered by the Assignor and accepted by the Railroad within the time limits specified in Section 2 of the Conditional Sale Agreement and not included in the term "Equipment" as used in the Conditional Sale Agreement or in this Agreement and Assignment.

7. 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 under 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 privileges and be subject to all the obligations of the Assignee hereunder.

8. The Assignor hereby represents and warrants to the Assignee, its successors and assigns,

(a) That the Conditional Sale Agreement was duly authorized and lawfully executed by it for a valid consideration and that it is binding upon the Assignor in accordance with its terms, and that it is now so in force without amendment thereto,

(b) That this Agreement and Assignment has been duly authorized, executed and delivered by the Assignor and is a valid instrument binding upon the Assignor and enforceable against the Assignor in accordance with its terms, and

(c) That title to each unit of Equipment with respect to which a closing is held, will be validly vested in the Assignee, free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement.

The Assignor covenants and 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 particularly to confirm the rights, title and interests hereby assigned and transferred by it to the Assignee or intended so to be.

9. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois.

10. This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certificed copy thereof, to the Railroad. Although this

Agreement and 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 stated in the acknowledgements hereto annexed.

IN WITNESS WHEREOF, each of the Assignor and the Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective seals to be hereunto affixed, duly attested, as of the day and year first above written.

NORTH WESTERN LEASING COMPANY

(SEAL)

By _____
Vice President

ATTEST:

_____
Assistant Secretary

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

(SEAL)

By _____
Vice President

ATTEST:

_____
Commercial Banking Officer

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 7th day of June, 1976 before me personally appeared J. M. Butler, to me personally known, who being by me duly sworn, says that he is a Vice President of NORTH WESTERN LEASING COMPANY, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

T J Bro
Notary Public

(NOTARIAL SEAL)

My Commission expires:

May 21, 1978

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 7th day of June 1976 before me personally appeared PETER D. HORAE, to me personally known, who being by me duly sworn, says that he is a Vice President of the CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Eileen Hudson
Notary Public

(NOTARIAL SEAL)

My Commission expires:

9-22-76

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

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY

By _____
Vice President