COUNTERPART
No. 6 of 8

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of November 15, 1968

Between

THE MAXSON CORPORATION

and

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

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AGREEMENT AND ASSIGNMENT

Dated as of November 15, 1968

Between

THE MAXSON CORPORATION

and

THE FIRST NATIONAL BANK OF CHICAGO,
As Agent

CONDITIONAL SALE AGREEMENT dated as of November 15, 1968, between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (hereinafter called the Railroad).

WHEREAS the Builder has agreed to construct and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment); and

WHEREAS the Equipment or portions thereof may be temporarily leased to the Railroad by the Builder pursuant to a lease of railroad equipment (hereinafter called the Temporary Lease) between the Railroad and the Builder, in contemplation of the sale thereof to the Railroad hereunder;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

1. *Construction and Sale.* The Builder will construct the Equipment and will sell and deliver it to the Railroad under this Agreement and the Railroad will purchase from the Builder and accept delivery of under this Agreement and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The design and quality of equipment and material in each unit of Equipment shall conform to all

Department of Transportation requirements and specifications, and all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to new railroad equipment of the character of such units as of the date of this Agreement.

2. *Inspection and Delivery.* The Builder has delivered pursuant to the Temporary Lease or will deliver the various units of the Equipment to the Railroad at such point or points within the United States of America as shall be specified by the Railroad, freight charges prepaid, in accordance with the delivery schedule set forth in Schedule B hereto.

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

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for hereunder before December 15, 1969, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute (*a*) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (*b*) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement providing for the purchase of such excluded Equipment by the Railroad, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Railroad and the Builder shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives

of the Railroad. When each unit of the Equipment shall be delivered by the Builder to the Railroad at the place of delivery designated as hereinabove provided, and if such inspector or representative finds that such unit conforms to the Specifications applicable thereto, he shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit has been accepted by him on behalf of the Railroad and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of Equipment covered thereby has been delivered to the Railroad and conforms to the Specifications and is acceptable to the Railroad; *provided, however,* that the Builder shall not be relieved of its warranties set forth or referred to in Articles 10 and 16 hereof.

On delivery of each of the units of Equipment hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

3. *Purchase Price and Payment.* The base price per unit of the Equipment, exclusive of interest but including freight charges, is set forth in Schedule B hereto (which price is hereinafter called the base price). The base price shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased as set forth in the invoice or invoices therefor delivered to the Railroad by the Builder as hereinafter provided in this Article 3.

The Equipment shall be settled for on one or more Closing Dates as specified in Item 2 of Schedule A hereto (the Equipment settled for on each Closing Date being hereinafter called a Group); *provided, however,* that, if there shall at any time have been delivered to and accepted by the Railroad units of Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or more following the last date of de-

livery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay in cash to the Manufacturer at the office of the Manufacturer, or at such other place as the Manufacturer may designate, the Purchase Price of the Equipment, as follows:

(a) On each Closing Date (as hereinafter defined) with respect to each Group the amount by which (x) the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of the railroad equipment covered by the agreements referred to in Item 3 of Schedule A hereto (hereinafter called the Other Agreements) for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being hereinafter called the Interim Invoiced Purchase Prices), exceeds (y) the sum of $4,050,000 and any amount or amounts previously paid or payable with respect to the Interim Invoiced Purchase Prices pursuant to this subparagraph (a) or subparagraph (a) of the third paragraph of Article 3 of the Other Agreements;

(b) Within three business days following receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) of all Groups of the Equipment, the amount, if any, by which the final aggregate Purchase Price of such Groups, as stated in the Final Certificate (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or payable pursuant to subparagraphs (a) and (c) of this paragraph; and

(c) In 20 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 20, result in an amount ending in an integral cent) annual instalments commencing Decem-

ber 16, 1969, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Interim Invoiced Purchase Prices of all the Equipment, less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

If this Agreement shall have been assigned by the Builder, the obligations of the Railroad under subparagraphs (a) and (b) of the preceding paragraph of this Article 3 shall be unsecured obligations and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof in respect of such obligations.

The first instalment of the Conditional Sale Indebtedness shall be payable on December 16, 1969, and subsequent instalments shall be payable annually thereafter on each December 16 through December 16, 1988. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 7½% per annum and such interest shall be payable, to the extent accrued, on June 16 and December 16 in each year, commencing June 16, 1969.

Anything herein contained to the contrary notwithstanding, the Interim Invoiced Purchase Price of each Group of the Equipment shall be so fixed that the aggregate of the Interim Invoiced Purchase Prices shall not exceed the Final Invoiced Purchase Price. The Final Certificate shall be delivered on or before December 16, 1969.

The term "Closing Date" with respect to each Group shall mean such date not more than ten business days following presentation by the Builder to the Railroad of the invoice for such Group and the Certificates of Acceptance in respect thereof, as shall be fixed by the Railroad by written notice delivered to the Manufacturer at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest and fees payable under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 8% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

4. *Changes in Prices.* The base price per unit of the Equipment is subject to increase or decrease in accordance with the Specifications as from time to time amended.

5. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Manufacturer for collection or other charges and will be free of expense to the Manufacturer in respect of the amount of any local, state or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of sales taxes], excess profits and similar taxes), license fees, fines or penalties hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes, license fees, fines and penalties the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising

therefrom or upon the Manufacturer solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer or result in a lien upon any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Manufacturer directly and paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of an invoice therefor and any sums of money so paid by the Manufacturer shall be secured by and under this Agreement; *provided, however,* that the Railroad shall not be obligated to reimburse the Manufacturer for any expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof (as evidenced by an opinion of counsel for the Manufacturer), or unless the Railroad shall have approved the payment thereof.

6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to

the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, 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 Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order, free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will execute and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and will pay to the Railroad any money paid to the Manufacturer pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

7. *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 B hereto,

and will cause each side of such unit to be kept plainly, distinctly, permanently and conspicuously marked, by a metal plate or otherwise, in letters not less than one inch in height, with the name of the Manufacturer followed by the word "Owner" or other appropriate words designated by the Manufacturer, 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 Manufacturer to the Equipment and its rights under this Agreement. The Railroad will cause each unit of the Equipment to be so plated or marked as soon as practicable after delivery to it hereunder and will replace promptly any such plate, or renew 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 Manufacturer and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Manufacturer by the Railroad and 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 Railway", "Chicago and North Western", "North Western", "CNW", or "C. & N. W.", or with the name or initials of a subsidiary or affiliated railroad company which is permitted to use the Equipment as hereinafter provided or may letter it in some appropriate manner for convenience of identification of the interest of the Railroad therein.

8. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, condemned or otherwise rendered permanently unfit for use from any cause whatsoever (such oc-

currences being hereinafter called Casualty Occurrences) prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. When the aggregate Casualty Value (as herein defined) of units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Manufacturer pursuant to this Article 8) shall exceed $60,000, the Railroad, within 30 days of such event, shall pay to the Manufacturer a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Manufacturer a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Value of each unit of Equipment suffering a Casualty Occurrence.

Any money paid to the Manufacturer pursuant to the preceding paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer, to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of other standard-gauge railroad equipment (other than passenger equipment or work equipment) first put into service no earlier than December 15, 1968, to replace such unit or units suffering a Casualty Occurrence. In case any money is applied to prepay Conditional Sale Indebtedness, it shall be so applied, on the first instalment date for the payment of Conditional Sale Indebtedness next following receipt by the Manufacturer of such written direction, to reduce instalments thereof falling due in inverse order of maturity thereof, after payment by the Railroad of all interest then accrued on each instalment or portion thereof so prepaid, but without premium.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement unit) shall be deemed to be the original Purchase Price thereof multiplied by a fraction the numerator of which is the number of instalment payment dates remaining as of the date of payment with respect to such Casualty Occurrence to and including December 16, 1988, and the denominator of which is 20. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be the cost thereof (provided through the application of moneys paid to the Manufacturer pursuant to the first paragraph of this Article 8) multiplied by a fraction the numerator of which is the number of instalment payment dates remaining as of the date of payment with respect to such Casualty Occurrence to and including December 16, 1988, and the denominator of which is the number of such instalment payment dates remaining as of the date of the acquisition of such replacement unit.

So long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, any money paid to the Manufacturer pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper rated prime by a national credit agency or (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least $50,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being herein called Investments), as may be specified in such written direction. Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest and earned discount received by the Manufacturer on any Investments shall be held by the Manufacturer and applied as herein provided. Upon any sale or

the maturity of any Investments, the proceeds thereof, plus any interest received by the Manufacturer thereon, up to the cost (including accrued interest) thereof, shall be held by the Manufacturer for application pursuant to this Article 8, and any excess shall, unless an event of default specified in Article 18 hereof shall have occurred and be continuing, be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Investments.

The Railroad will cause any replacement unit to be plated or marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements. All such replacements shall be warranted in like manner as is customary for equipment of the same type, and the vendor of the replacements shall, if other than the Builder, duly consent to the subjection thereof to this Agreement and agree to be bound by all the terms and provisions contained herein in respect of such replacements

in like manner as the Builder is in respect of the original Equipment delivered hereunder.

Whenever the Railroad shall file with the Manufacturer, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of standard-gauge railroad equipment, the Railroad shall file therewith

(1) a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing unit is standard-gauge railroad equipment (other than passenger equipment or work equipment) first put into service no earlier than December 15, 1968, has been plated or marked as required by the provisions of this Article 8 and certifying the cost of such replacing unit and that the cost thereof does not exceed the fair value of such unit; and

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Manufacturer free and clear of all liens and encumbrances, and that such unit has come under and become subject to this Agreement.

If one of the events of default specified in Article 18 hereof shall have occurred and be continuing, then so long as such event of default shall continue all money then held by the Manufacturer pursuant to this Article 8 shall be applied by the Manufacturer as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

In order to facilitate the sale, manufacture, or other disposition of any Equipment suffering a Casualty Occurrence, the Manufacturer shall upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other

documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

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

10. *Builder's Warranty of Material and Workmanship.* The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 5 of Schedule A hereto.

11. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the Interchange Rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

12. *Reports and Inspections.* On or before March 31 in each year, commencing with the year 1970, the Railroad will furnish to the Manufacturer an accurate statement, as of the preceding December 31, of an authorized officer of the

Railroad, (*a*) showing the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding calendar year (or, in the case of the first such statement, since the date hereof), and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request, and (*b*) stating that, in the case of all Equipment repaired or repainted during the preceding calendar year (or, in the case of the first such statement, since the date hereof), the plates or other markings required by Article 7 hereof have been preserved or replaced. The Manufacturer shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

13. *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 upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, and upon the lines of the 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 the Equipment may be used also upon connecting and other railroads in the usual interchange of traffic, from and after delivery of the Equipment by the Builder hereunder, but only upon and subject to all the terms and conditions of this Agreement.

14. *Prohibition Against Liens.* The Railroad will pay or 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 Manufacturer thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by ap-

propriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder. Any sums paid by the Manufacturer in discharge of liens and charges on the Equipment shall be secured by and under this Agreement.

15. *Railroad's Indemnities.* The Railroad agrees to indemnify and save harmless the Manufacturer from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Manufacturer of title to the Equipment or in connection with the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer or arising out of the transfer of title by the Manufacturer pursuant to any provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 6 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 the Equipment; *provided, however,* that the Builder shall not be relieved from its warranties set forth or referred to in Articles 10 and 16 hereof.

16. *Patent Indemnities.* Except in cases of articles and materials specified by the Railroad and not manufactured by the Builder and in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right; and the Railroad likewise will indemnify, protect and hold harmless the Manufacturer 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 Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any article or material specified by the Railroad and not manufactured by the Builder, or of any design specified by the Railroad and not developed or purported to be developed by the Builder, which infringes or is claimed to infringe on any patent or other right. The Builder 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 Builder has or hereafter shall have against the seller or sellers of any articles or materials specified by the Railroad hereunder and not manufactured by the Builder, or of any design specified by the Railroad hereunder and not developed or purported to be developed by the Builder, and purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such article or material, or any such design, or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Railroad, or its assigns, all and every such further assurance as may be reasonably requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder

from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

17. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a railroad company organized under the laws of the United States of America or any of the States thereof, 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 Manufacturer, shall assume and agree to perform each of and all the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant; *provided, however*, that the Railroad shall remain liable for such payment and performance as a principal and not a surety.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities set forth or referred to in Articles 10 and 16 hereof or relieve the Railroad of its obligations to the Builder under Articles 1, 2, 3, 5, 15 and 16 hereof and this Article 17 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 Manufacturer'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 railroad equipment manufacturers to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Manufacturer 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 Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Manufacturer, as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price 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, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment, or the manufacture, construction, delivery, or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad

by the Builder. Any and all such obligations howsoever arising shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment, or successive assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such assignee, change the name plates or other marking on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such plates or other marking to bear such words or legend as shall be specified by such assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such plates or other marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of obtaining and attaching any series of such plates or changing any other marking in the event of any assignment of title to not less than all of the Equipment at the time covered by this Conditional Sale Agreement shall be borne by the Railroad, and, in the event of any assignment of title to less than all such Equipment, such cost shall be borne by the assignee.

In the event of any such assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment, deliver to the assignee of the Equipment, at least five business days prior to the Closing Date, all documents (in such number of counterparts or copies as may reasonably be requested) required by the terms of such assignment (other than any opinion of counsel for the assignee) to be delivered to such assignee in connection with such settlement.

If this Agreement shall have been assigned by the Builder, and the assignee shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and if such

payment shall not have been previously paid by the assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the average prime rate of interest of the five largest New York City banks in effect on the date such payment was due.

18. *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 the Railroad as herein provided and such failure shall continue for more than ten days; or

(*b*) the Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Manufacturer for such compliance; or

(*c*) any proceeding shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, and, unless such proceeding shall be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffective-

ness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(*d*) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

(*f*) an event of default shall occur under Article 18 of an Other Agreement;

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements

then in force and applicable to such action by the Manufacturer, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate of 8% per annum, to the extent legally enforceable, and the Manufacturer shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Manufacturer may at its election waive any such event of default and its consequences and rescind any Declaration of Default by notice to the Railroad in writing to that effect. If at any time after any Declaration of Default all sums which shall have become due and payable by the Railroad hereunder (other than indebtedness which shall have become due and payable solely by reason of such Declaration of Default) shall be paid by the Railroad (with interest at the rate of 8% to the extent legally enforceable) before any sale or lease of any of the Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Manufacturer, or provision deemed by the Manufacturer to be adequate shall be made therefor, then, and in every such case, the Manufacturer shall waive any such event of default and its consequences and rescind such Declaration of Default. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect

any other or subsequent default or impair any rights or remedies consequent thereon.

19. *Remedies.* At any time during the continuance of a Declaration of Default, the Manufacturer may, upon such further notice, if any, as may be required for compliance with any applicable mandatory requirement of law, 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 Article 19 expressly provided, and may remove the same from possession and use of the Railroad, or any other person, and for such purpose may enter upon the premises of the Railroad or wherever any of 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 Manufacturer shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Manufacturer, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Manufacturer and shall there deliver the Equipment or cause it to be delivered to the Manufacturer; and, at the option of the Manufacturer, the Manufacturer may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Manufacturer 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 Manufacturer reasonably convenient. The agreement to deliver and store the Equipment as hereinbefore provided is of the essence of this Agreement between

the parties, and, upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Manufacturer and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Manufacturer (after retaking possession of the Equipment as hereinbefore in this Article 19 provided) may at its election retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Manufacturer shall deem fit. Written notice of the Manufacturer's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 24 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Manufacturer should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Equipment by the Railroad; *provided, however,* that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Manufacturer the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further,* that if the Railroad or any other

persons notified under the terms of this paragraph object in writing to the Manufacturer within 30 days from the receipt of notice of the Manufacturer's election to retain the Equipment, then the Manufacturer may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Manufacturer shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

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

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer 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 Manufacturer may determine; *provided, however,* that the Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Manufacturer may 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 Article 19), and in payment of the purchase price therefor the Manufacturer shall be entitled to have credited on account thereof all sums due to the Manufacturer from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Manufacturer 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 Manufacturer. 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.

If, after applying all sums of money realized by the Manufacturer 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 Manufacturer upon demand, and, if the Railroad shall fail to pay such deficiency, the Manufacturer may

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

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

For the purposes of this Article 19, the terms "Purchase Price" and "Equipment" shall include, respectively, the aggregate of the Purchase Prices and the Equipment covered by this Agreement and the Other Agreements in respect of which the Manufacturer's rights shall at the time be assigned to the same person to which the Manufacturer's rights under this Agreement are then assigned; and except in the preceding clause of this sentence, references to "this Agreement" or Articles thereof shall be deemed to include the Other Agreements referred to in said preceding clause, or the corresponding Articles thereof, as the case may be.

The foregoing provisions of this Article 19 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable law of any jurisdiction 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.

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

21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Manufacturer shall impair or affect the Manufacturer'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 Manufacturer's rights or the obligations of the Railroad hereunder. The Manufacturer'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 Manufacturer's rights hereunder with respect to any subsequent payments or any other default hereunder.

22. *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 in such place or places as are required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, 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 Manufacturer cer-

tificates or other evidence of such filing and recording satisfactory to the Manufacturer.

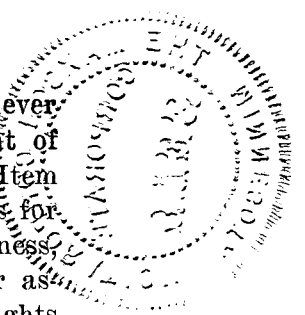
23. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interest acquired in such first assignment. For the purposes of this Article 23, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

24. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 400 West Madison Street, Chicago, Illinois 60606, or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed to the Builder at the address specified in Item 4 of Schedule A hereto, or at such other address as may have been furnished in writing to the Railroad by the Builder. Any notice hereunder to any assignee of the Manufacturer 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 Manufacturer, as the case may be, by such assignee.

25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

26. *Effect and Modification of Agreement.* This Agreement and the schedules attached hereto exclusively and completely state the rights of the Manufacturer and the Railroad with respect to the sale of the Equipment and supersede all other agreements, oral and 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 Manufacturer and the Railroad.

27. *Law Governing.* The terms of this Agreement 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 rights conferred by Section 20c of the Interstate Commerce Act and by the recordation provisions of any other act pursuant to which this Agreement is recorded. The Railroad hereby represents and warrants that its chief place of business is located in either the State of Illinois or the State of Wisconsin.



28. *Definitions.* The term "Manufacturer", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing 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 or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business.

29. *Execution.* Although this Agreement is dated for convenience as of November 15, 1968, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates in the acknowledgment 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 date first above written.

THE MAXSON CORPORATION

By Robert L. Reid
Vice President

[CORPORATE SEAL]

Attest:
Frederick J. Putzer
Assistant Secretary

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

By H. R. Brandt
Vice President

[CORPORATE SEAL]

Attest:
E. C. Marquardt
Assistant Secretary

STATE OF MINNESOTA }
COUNTY OF RAMSEY } ss.:

On this 9th day of December, 1968, before me personally appeared Robert L. Nord, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE MAXSON CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

David L. White
Notary Public

My Commission Expires

[NOTARIAL SEAL]

DAVID L. WHITE
Notary Public, Ramsey County, Minn.
My Commission Expires Aug. 18, 1974

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this 12th day of December, 1968, before me personally appeared T. L. Brandt, to me personally known, who, being by me duly sworn, says that he is a Vice President of CHICAGO AND NORTH WESTERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

D. J. Walsh
Notary Public

My Commission expires July 18, 1971

[NOTARIAL SEAL]

SCHEDULE A—MAXSON

Item 1: The Maxson Corporation, a Minnesota corporation.

Item 2: For the purpose of making settlement, the Equipment shall be settled for in not more than two Groups of units of the Equipment delivered to and accepted by the Railroad hereunder.

Item 3: The Conditional Sale Agreement dated as of November 15, 1968, between the Railroad and Thrall Car Manufacturing Company and Fruit Growers Express Company, respectively, and any other conditional sale agreements entered into by the Railroad pursuant to the third paragraph of an Agreement dated as of November 15, 1968, among The First National Bank of Chicago, as Agent, the Railroad and the parties named in Schedules A and B thereto.

Item 4: 500 Como Avenue, St. Paul, Minnesota 55103.

Item 5: *Builder's Warranty of Materials and Workmanship.* The Builder warrants that the units of the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Railroad, be re-

turned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. This warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2, 3 and 16 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. The Builder further agrees with the Railroad that neither the inspection as provided in Article 2 of the Agreement, nor any examination nor the acceptance of any units of the Equipment by the Railroad under said Article 2 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 5.

SCHEDULE B—MAXSON

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Railroad's Car Numbers (both inclusive)	Unit Base Price	Total Base Price	Delivery
40' 6" 50-ton hi-cube steel box cars, with bulkheads	No. 131 dated March 12, 1968	St. Paul, Minnesota	9	57950 to 57958	$19,801.25	$178,211.25	Dec. 1968
40' 6" 50-ton hi-cube steel box cars, with DF-belt-rails	No. 131 dated March 12, 1968	St. Paul, Minnesota	2	97959 to 97960	17,926.25	35,852.50	Dec. 1968
60' 9" 70-ton capacity box cars	No. 185 dated October 1, 1968	St. Paul, Minnesota	13	91231 to 91243	26,353.25	342,592.25	Mar. 1969
60' 9" 100-ton capacity box cars	No. 185 dated October 1, 1968	St. Paul, Minnesota	5	91619 to 91623	26,353.25	131,766.35	Mar. 1969
						$688,422.35	

AGREEMENT AND ASSIGNMENT dated as of November 15, 1968, between the corporation first named following the testimonium below (hereinafter called the Builder) and THE FIRST NATIONAL BANK OF CHICAGO, acting as Agent under an Agreement dated as of November 15, 1968 (hereinafter called the Finance Agreement) (said Bank, so acting, being hereinafter called the Assignee).

WHEREAS the Builder and CHICAGO AND NORTH WESTERN RAILWAY COMPANY, a Wisconsin corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of November 15, 1968 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW, THEREFORE, this Agreement and Assignment witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns (*a*) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered and accepted and upon payment to the Builder of the amount required to be paid under the first paragraph of Section 6 hereof in respect of such unit, (*b*) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (except the right to manufacture and the right to receive the payments specified in the third paragraph of Article 2 thereof and in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof, and reimbursement for taxes

paid or incurred by the Builder 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 Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the purchase 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 (*c*) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Builder 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); *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 obligations of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations set forth or referred to in Articles 10 and 16 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Builder under Articles 1, 2, 5, 15, 16 and 17 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligations under said Articles) 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 Article 17 of the Conditional Sale Agreement, all obligations of the Builder 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 Builder. In furtherance of the foregoing assignment and transfer, the Builder 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 Builder, 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 Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same under the Conditional Sale Agreement (but only after filing of the Conditional Sale Agreement and this Agreement and Assignment with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, of which fact the certificate of the Railroad shall constitute proof on which the Builder may rely) 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 of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder 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, encumbrances and security interests of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad pursuant to the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the As-

signee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 10 or Article 16 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this Agreement and Assignment or of successive assignments or transfers. The Builder shall have no liability under the foregoing provision of this paragraph unless (*a*) the Assignee, in any such suit, proceeding or action by the Assignee, hereinabove in this paragraph described, promptly moves or takes other appropriate action, on the basis of the provisions of Article 17 of the Conditional Sale Agreement, to strike any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, and (*b*) upon any such denial and acceptance, the Assignee promptly notifies the Builder of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Builder is given the right by the Assignee to compromise, settle or defend against such defense, set-off, counterclaim or recoupment.

The Builder 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 design, article or material which infringes, or is claimed to infringe, on any patent or other right, except for any article or material specified by the Railroad and not manufactured by the Builder or any design specified by the Railroad and not developed or purported to be developed by the Builder.

4. The Builder agrees that it will instruct the Railroad to plainly, distinctly, permanently and conspicuously place and fasten on each side of each unit of the Equipment a metal plate bearing the following legend, or to cause such legend to be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one inch in height:

"THE FIRST NATIONAL BANK OF CHICAGO,
AGENT, OWNER".

5. Upon request of the Assignee, its successors and assigns, the Builder 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 Builder therein or in the Equipment.

6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 3), shall pay to the Builder an amount equal to that portion of the Interim Invoiced Purchase Price (as defined in said

Article 3) of such Group not payable by the Railroad pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(*a*) A bill of sale from the Builder to the Assignee, evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, encumbrances and security interests of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(*b*) A Certificate of Acceptance with respect to the units of the Equipment as contemplated by Article 2 of the Conditional Sale Agreement;

(*c*) Duplicate invoice or invoices for the Equipment accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(*d*) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of the Closing Date, stating that (*i*) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (*ii*) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid and binding instrument, (*iii*) the Assignee is vested with all the rights, titles, interests, powers, privileges and

remedies purported to be assigned to it by this Agreement and Assignment, (*iv*) security title to the units of Equipment in such Group is validly vested in the Assignee, free of all claims, liens, encumbrances and security interests except only the rights of the Railroad under the Conditional Sale Agreement, (*v*) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Agreement and Assignment, (*vi*) the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and 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 the District of Columbia, (*vii*) the Finance Agreement has been duly authorized, executed and delivered by the Assignee and the Railroad and is a valid and binding agreement upon said parties and (*viii*) registration of the Conditional Sale Agreement or this Agreement and Assignment or of interests acquired in this Agreement and Assignment pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(*e*) An opinion of counsel for the Builder, dated as of the Closing Date, stating that (*i*) the Builder is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (*ii*) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms,

(*iii*) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (*iv*) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment, (*v*) title to the units of Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens, encumbrances and security interests except only the rights of the Railroad under the Conditional Sale Agreement and (*vi*) the Temporary Lease, if any, of the Equipment referred to in the Conditional Sale Agreement has terminated with respect to the units of the Equipment in such Group and the units of the Equipment which may have been subject thereto are free of all claims, liens, encumbrances and security interests arising thereunder;

(*f*) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (*i*), (*ii*), (*iii*), (*iv*), (*v*), (*vi*) and, insofar as it relates to the Railroad, (*vii*) of subparagraph (*d*) above, and stating that (*i*) the Railroad is a duly organized and existing corporation in good standing under the laws of its state of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted and (*ii*) the Temporary Lease, if any, of the Equipment referred to in the Conditional Sale Agreement has terminated with respect to the units of the Equipment in such Group and the units of the Equipment which may have been subject thereto are free of all claims, liens, encumbrances and security interests arising thereunder; and

(*g*) Unless payment of that portion of the Interim Invoiced Purchase Price of the Equipment payable pursuant to subparagraph (*a*) of the third paragraph of Article 3 of the Conditional Sale Agreement is made by

the Assignee through the use of funds furnished to it for the purpose by the Railroad, a counterpart of a receipt from the Builder acknowledging such payment.

In giving the opinions specified in subparagraphs (*d*), (*e*) and (*f*) of the next preceding paragraph, counsel may qualify any opinion to the effect that any agreement is a 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 an opinion pursuant to subparagraph (*d*) of the next preceding paragraph, Messrs. Cravath, Swaine & Moore may rely on the opinions of counsel for the Builder and the Railroad referred to in subparagraphs (*e*) and (*f*), respectively, of the next preceding paragraph as to all matters of law of jurisdictions other than the United States or the State of New York.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under Article 18 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

The obligation of the Assignee hereunder to make any payment to the Builder as hereinabove provided is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the Investors with respect thereto.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any Equip-

ment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

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

8. The Builder hereby:

(*a*) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

(*b*) 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 perfectly to confirm the rights, titles and interests hereby assigned and transferred 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; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and by the recordation provisions of any other act pursuant to which this Agreement and Assignment is recorded.

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.

THE MAXSON CORPORATION

By Robert L. Nord
Vice President

[CORPORATE SEAL]

Attest:

Frederick J. Pietzsch
Assistant Secretary

THE FIRST NATIONAL BANK OF CHICAGO,
as Agent

By .....
Vice President

[CORPORATE SEAL]

Attest:

A. S. Nicpee
Trust Officer

STATE OF MINNESOTA }
COUNTY OF RAMSEY } SS.:

On this 9th day of December, 1968, before me personally appeared Robert L. Nord, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE MAXSON CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

David L. White
Notary Public

DAVID L. WHITE
Notary Public, Ramsey County, Minn.
My Commission Expires Aug. 18, 1974

My Commission expires
[NOTARIAL SEAL]

STATE OF ILLINOIS }
COUNTY OF COOK } SS.:

On this 12th day of December, 1968, before me personally appeared A. J. HURT, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST NATIONAL BANK OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

My Commission expires DEC 16 1970
[NOTARIAL SEAL]

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

CHICAGO AND NORTH WESTERN RAILWAY COMPANY hereby acknowledges due notice of, and consents to, the assignment made by the foregoing Agreement and Assignment as of November 15, 1968.

CHICAGO AND NORTH WESTERN
RAILWAY COMPANY,

By J. M. Brandt
Vice President