

Approved March 28, 1986  
Date

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS

The meeting was called to order by Lloyd D. Polson at  
Chairperson

9:00 a.m./~~p.m.~~ on March 20, 1986 in room 423-S of the Capitol.

All members were present except: Representative Freeman, who was excused.

Committee staff present:

Raney Gilliland, Legislative Research Department  
Norman Furse, Revisor of Statutes Office  
Mary Jane Holt, Committee Secretary

Conferees appearing before the committee:

Dale Amick, Western Retail Implement and Hardware Association  
Jack Selzer, Counsel, Western Retail Implement & Hardware Association  
Ron Shouse, Shouse Implement Co., Inc., Abilene  
Ray Edwards, Deere and Company

Representative Dean distributed copies of the Sedgwick County Agriculture Facts to the Committee members.

Raney Gilliland explained H.B. 3042, tabled by this Committee on March 5, 1986, was requested by the Kansas State Grain Inspection Department, and had three main provisions. (1) Provided a new fee for factor only determination. (2) Changed how the Grain Inspection Department charges for annual fees for grain warehouses based on functional units of the warehouse facilities, rather than combined capacities. (3) Increased the late penalty fee from \$3.00 to \$10.00 perday for renewal. In November the Grain Inspection Department promulgated rules and regulations that encompassed the basic provisions of charging annual license fees for grain warehouses on a functional unit basis. They were approved by the Attorney General and the Department of Administration. They were filed with the Revisor of Statutes Office and are permanent rules and regulations that will become effective May 1, 1986. The basic documents are Attachment I. The industry was not in attendance at the hearings the Grain Inspection Department held on these rules and regulations and there was not a hearing before the Joint Committee on Administrative Rules and Regulations. House Concurrent Resolution 5 RS 2743, Attachment II, requesting the Director of the Kansas State Grain Inspection Department to delete charges for functional units from the rules and regulations was distributed to the Committee for their consideration.

A subcommittee of the House Ways and Means Committee is considering introducing legislation authorizing the factor only determination provision that was in H.B. 4032.

Representative Apt moved to ask Ways and Means to introduce a bill changing the fee structure rather than the Agriculture and Small Business Committee introducing the concurrent resolution. Representative Buehler seconded the motion. Representative Solbach made a friendly amendment that Chairman Polson ask the Speaker to pull H.B. 3042 out of this Committee, send it to Ways and Means and request Ways and Means to amend the bill, or refer it back to this Committee for amendment. The motion, as amended, passed.

Hearing on S.B. 544—An act to regulate and govern business relations between manufacturers of agricultural equipment and independent retail dealers of those products.

Dale Amick explained S.B. 544 is a compromise between the farm equipment dealers and the farm equipment manufacturers. Jack Dillard of Teneco, who could not attend this hearing, informed Mr. Amick he supports this bill. Mr. Amick pointed out two printing errors in the bill.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMITTEE ON AGRICULTURE AND SMALL BUSINESS,  
room 423-S, Statehouse, at 9:00 a.m./~~p.m.~~ on March 20, 19 86

On page 3, line 89, the word "with" should be "without", and on line 100, following the word "commencement" the word "or" should be "of".

Jack Selzer informed the Committee that under this bill the farm equipment dealers of Kansas seek protection which this legislature has given to the Kansas automobile dealers who have statutory protection from cancellation, termination or nonrenewal of a dealership unless there is reasonable justification, Attachment III.

Ron Shouse testified S.B. 544 will help alleviate the unfairness to farm equipment dealers whose suppliers offer poor contracts, Attachment IV.

Ray Edwards informed the Committee that this compromise bill has been agreed to by Deere and Company.

Jack Selzer stated the changes in Section 7 on page 7 adding to the sentence on line 242, "including proceedings under the Kansas consumer protection act.", and deleting the last sentence, were suggested by the Attorney General. Staff was requested to check whether this language was appropriate.

The Committee meeting was adjourned at 9:55 a.m.

The next meeting will be at 9:00 a.m., Friday, March 21, 1986 in Room 423-S.



THE STATE OF KANSAS



GRAIN INSPECTION DEPARTMENT

GENERAL OFFICE

235 S. Topeka, P.O. Box 1918, Topeka, Kansas 66601-1918

INSPECTION DIVISION

WAREHOUSE DIVISION

PHONE (913) 296-3451

PHONE (913) 296-3454

November 27, 1985

INSPECTION POINTS

ATCHISON	KANSAS CITY
COLBY	SALINA
DODGE CITY	TOPEKA
HUTCHINSON	WICHITA

JOHN CARLIN  
GOVERNOR  
MARVIN R. WEBB  
DIRECTOR

Mr. Arden Ensley  
Kansas Revisor of Statutes  
State House, Room 322 South  
Topeka, Kansas 66612

Dear Mr. Ensley:

Pursuant to the provisions of the Kansas Rules and Regulations Filing Act, I am hereby transmitting two amended regulations, 25-4-1 and 25-4-4 for filing by your office.

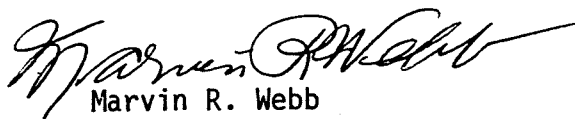
These regulations were submitted to the Secretary of Administration for approval as to organization, style, orthography and grammar. The Attorney General's office approved the regulations as to legality.

A notice of public hearing was published in the November 7, 1985 edition of the Kansas Register. A copy of the fiscal impact statement is enclosed.

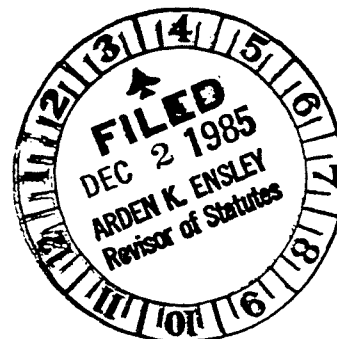
I as Director of the Kansas State Grain Inspection Department, adopted these regulations on November 25, 1985.

If you have any questions, please contact me.

Sincerely,

  
Marvin R. Webb  
Director

MRW:csk  
Attachment



3-20-86 Hs. ASB  
Attachment I

THE STATE OF KANSAS



JOHN CARLIN  
GOVERNOR  
MARVIN R. WEBB  
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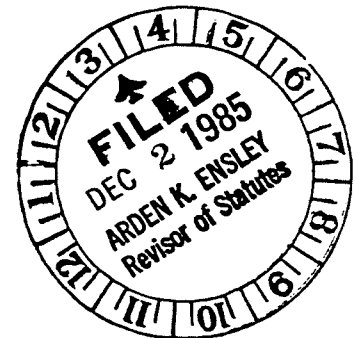
PUBLIC HEARING MEETING

A public hearing on Regulation 25-4-1 and 25-4-4 was held Monday, November 25, 1985, at 2:00 p.m. in the conference room of the Kansas State Grain Inspection Department, 235 S. Topeka, Topeka, Kansas.

Present were the Kansas State Grain Inspection Department Administrative staff.

None of the notice parties appeared.

The Director adopted the amended K.A.R. 24-4-1 and 25-4-4 as written on November 25, 1985. The meeting was adjourned.



THE STATE OF KANSAS



JOHN CARLIN  
GOVERNOR  
MARVIN R. WEBB  
DIRECTOR

GRAIN INSPECTION DEPARTMENT  
GENERAL OFFICE

235 S. Topeka, P.O. Box 1918, Topeka, Kansas 66601-1918

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November 27, 1985

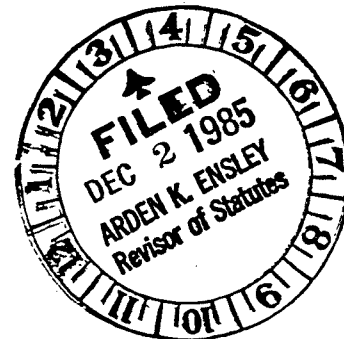
PHONE (913) 296-3454

INSPECTION POINTS  
ATCHISON KANSAS CITY  
COLBY SALINA  
DODGE CITY TOPEKA  
HUTCHINSON WICHITA

FISCAL IMPACT STATEMENT

K.A.R. 25-4-4 - This regulation is being amended to reflect changes in fees for special or requested examinations as well as annual license fees for public grain warehouses. It is estimated the increase in annual fees will result in an increase in income for the Warehouse Division of \$46,000.00. Changes in the examiner's fee for "special" or requested examinations from \$15.00 per hour to \$20.00 per hour will result in an increase of income for the Warehouse Division of approximately \$9,575.00.

K.A.R. 25-4-1 - This regulation is being amended to provide a new service to the grain industry, namely, the check-testing of large weights using a mass comparator. Previously, check-testing large weights, which are located in elevator head-houses, required removing the weights from the head-houses, transporting them to Topeka for check-testing and transporting them back to their locations when testing was completed. This procedure usually proved very costly to the elevators because they had to hire a crane to effect removal and replacement of the large weights from the head-houses. Utilization of the mass comparator eliminates the need to hire a crane for removal of the large weights for check-testing. This will be a cost saving operation for the elevators. The fee for check-testing large weights will be \$75.00/per weight plus \$11.00/per hour. It is estimated use of the mass comparator will result in additional income to the Inspection Division of \$15,136.00 per year.



APPROVED

ATTORNEY GENERAL

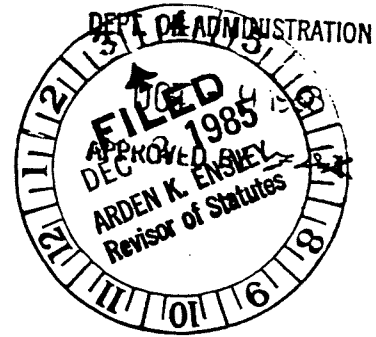
By JLM 10-14-85 Asst.

STATE GRAIN

INSPECTION DEPARTMENT

ADMINISTRATIVE REGULATIONS

Article 4. - FEES AND CHARGES



25-4-1. Fees. (a) Definitions.

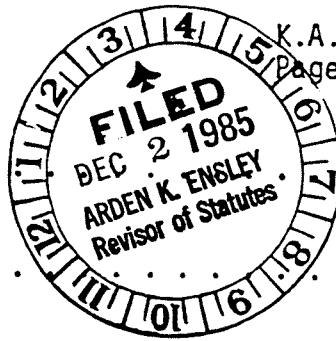
- (1) "Regular hours" means 7:00 a.m. to 4:30 p.m., Monday through Friday. Regular hours for samplers may be adjusted to elevator hours, not to exceed eight hours per day.
  - (2) "Overtime" means work performed during any hours other than the regular hours defined in paragraph (1) of this subsection.
  - (3) "Travel time" means time spent in roundtrip travel from portal to portal. If an employee performs inspections at several locations on one trip, travel time may be prorated.
  - (4) Holidays include New Year's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day and Martin Luther King Day.
  - (5) "Call in" and "call back" means any work performed for which the employee is called in to work on a regular day off or called back to work after a regular work schedule.
- (b) This revised schedule supersedes all other schedules issued by this agency.

Effective May 1, 1985, the following fees shall be charged for the services rendered by this department under the U. S. grain standards act (as amended):

Official Inspection, includes grading and sampling EXCEPT WHERE INDICATED

FEE

Hopper car. . . . . \$11.00/per inspection or reinspection



Extra sample secured at time of original . . . . .	3.50/per request
New sample secured after original. . . . .	5.00/per request
Boxcar -- direct transfer. . . . .	7.00/per inspection or reinspection
Extra sample secured at time of original . . . . .	2.00/per request
New sample secured after original. . . . .	3.00/per request
Truck or trailer . . . . .	5.50/per inspection or reinspection
Extra sample secured at time of original . . . . .	2.00/per request
Bin inspection . . . . .	5.00/per bin plus sampler regular hourly rate
Submitted sample inspection. . . . .	4.00/per sample
DHV Count. . . . .	3.00
Warehouseman sample-lot inspection . . . . .	6.00/per sample
Diverter-type (D/T) sample at points outside inspection point switching limits . . . . .	6.00/plus sampler regular hourly rate and travel time hourly rate plus mileage
Barge inspection or reinspection . . . . .	2.50/per 1,000 bushels or fraction thereof
All reinspections of above carriers based on file sample . . . . .	4.00
Initial checktest, approval of country point diverter-type (D/T) samplers, and train elevator sampler . . . . .	40.00/per D/T sampler plus regular hourly and travel time rate plus mileage
Diverter-type (D/T) review checktest visits at country points. . . . .	regular hourly rate plus mileage
Checktesting diverter-type (D/T) samplers at inspection points . . . . .	regular hourly rate (1 hour minimum charge)

**APPROVED**

ATTORNEY GENERAL

By JLM Asst.

DEPT. OF ADMINISTRATION

OCT - 9 1985

APPROVED BY FDK



**APPROVED**

ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

K.A.R. 25-4-1

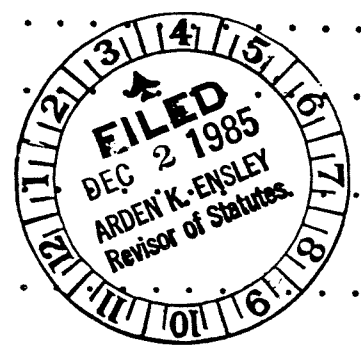
Page 3

OCT - 9 1985

By JLM 10-14-85 Asst.

APPROVED BY FAX

Protein, initial or reinspection. . . . .	2.75
Factor only determination, moisture . . . . .	1.25
Approved statements requested in addition to grade requirements . . . . .	2.25
Duplicate certificate . . . . .	1.00
Stowage examination, hopper or boxcar . . . . .	2.25/per request
Stowage examination, barge. . . . .	5.50/per request
Report grades by telephone. . . . .	CALL COLLECT



(c) Miscellaneous Fees

- (1) The regular hourly rate shall be \$11.00. The number of regular hours shall be calculated in half hour increments.
- (2) The overtime hourly rate shall be \$11.00 per hour. The number of overtime hours shall be calculated in half hour increments. For those inspections for which the fee is based on a per unit charge, the overtime hourly rate shall be applied in addition to that per unit fee. For those inspections for which fees are based on an hourly rate, the overtime hourly rate shall not be imposed in addition to the regular hourly rate.
- (3) The holiday hourly rate shall be \$11.00 per hour. The number of holiday hours shall be calculated in half hour increments. For those inspections for which fees are based on a per unit charge, the holiday hourly rate shall be applied in addition to that per unit fee. For inspections for which fees are based on an hourly rate, the holiday rate shall not be applied in addition to the regular hourly rate.
- (4) When an employee is called in or called back, a minimum of two hours at the overtime hourly rate shall be charged.
- (5) Travel time. The travel time rate shall be \$11.00 per hour.
- (6) Mileage expenses shall be charged, per mile driven, at the rate per mile determined by the secretary of administration pursuant to K.S.A. 75-4607 or amendments thereto. If any employee performs inspections at several locations

on one trip, the mileage expenses may be prorated.

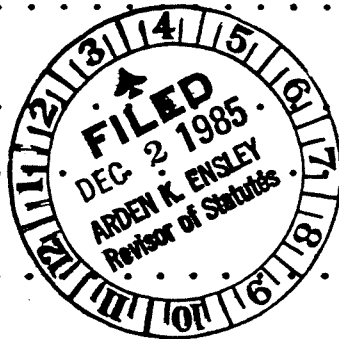
(d) Effective May 1, 1985, the following fees shall be charged for the services rendered by this department not under the U. S. grain standards act (as amended):

Edible Bean Inspection Service

Edible bean inspection (official warehouse lot) . . . . .	15.00/per certificate
Edible bean inspection (official car sample). . . . .	15.00/per certificate
Edible bean inspection (official truck sample) . . . . .	10.00/per certificate
Edible bean inspection (submitted sample) . . . . .	7.00/per certificate
Edible bean inspection sampling fee, check weighing, or checkloading. . . . .	11.00/per hour

Weights

Hopper car, boxcar or direct transfer . . . . .	6.00
Barges, in or out . . . . .	2.25/per 1,000 bushels or fraction thereof
Truck or trailer. . . . .	6.00
House transfers . . . . .	1.50/per 1,000 bushels or fraction thereof
Weigh-up, annual. . . . .	1.00/per 1,000 bushels or fraction thereof
In-weighing, sacked cars. . . . .	regular hourly rate
Out-weighing, sacked cars, with count . . . . .	regular hourly rate
Out-weighing, sacked cars, with count and weight each sack. . . . .	regular hourly rate



Miscellaneous Services

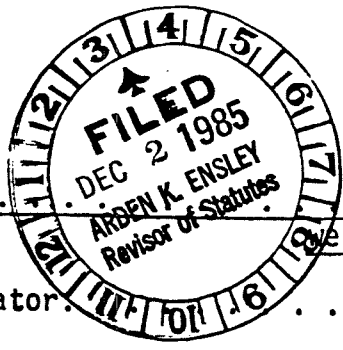
DHV count. . . . .	3.00
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**APPROVED**  
ATTORNEY GENERAL

DEPT. OF ADMINISTRATION

OCT - 9 1985

APPROVED BY *FDR*



Check testing large weights . . . . .	75.00/per pound plus regular hourly rate
Hopper scale, first test at elevator . . . . .	100.00
Hopper scale, each additional test at elevator . . . . .	75.00/per scale
Hopper scale per F.G.I.S. test . . . . .	100.00/plus regular hourly rate on site
Hopper scale at points where certified weights are not issued . . . . .	100.00/plus mileage and subsistence
Mileage charge for special trips by the hopper testing scale truck. per mile driven . . . . .	.45
Labor of scale inspector for repair work outside regular inspecting or adjusting of scale . . . . .	11.00/per hour
Charge for weigher, by special arrangement, per man . . . . .	11.00/per hour

(Authorized by K.S.A. 1984 Supp. 34-103a, as amended by L. 1984, ch. 150, sec. 1,  
K.S.A. 34-2,100, as amended by L. 1984, ch. 150, sec. 14; implementing K.S.A. 1984  
 Supp. 34-103a, as amended by L. 1984, ch. 150, sec. 1; K.S.A. 34-251, as amended  
by L. 1984, ch. 150, sec. 12; K.S.A. 1984 Supp. 34-2, 108, as amended by L. 1984, ch.  
150, sec. 15; effective Jan. 1, 1966; amended Jan. 1, 1967; amended, E-68-7, Feb.  
 20, 1968; amended Jan. 1, 1969; amended, E-69-7, May 28, 1969; amended Jan. 1, 1970;  
 amended, E-71-26, June 18, 1971; amended Jan. 1, 1972; amended, E-72-8, Feb. 26,  
 1972; amended Jan. 1, 1973; amended, E-74-27, June 26, 1974; amended, E-74-61,  
 Sept. 30, 1974; amended May 1, 1975; amended, E-78-10, March 24, 1977; modified,  
 L. 1978, ch. 448, May 1, 1978; modified, L. 1980, ch. 345, May 1, 1980; amended  
 May 1, 1981; amended May 1, 1982; amended, T-83-20, July 21, 1982; amended May 1  
 1983; amended May 1, 1984; amended May 1, 1985; amended May 1, 1986.)

DEPT. OF ADMINISTRATION

**APPROVED**  
ATTORNEY GENERAL

OCT - 9 1985

APPROVED BY *FX*

By *ARM*

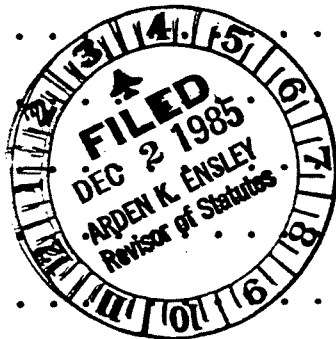
KANSAS

PUBLIC WAREHOUSE LAW

RULES AND REGULATIONS

25.4.4. Fees and charges; warehouse division. (a) The annual fee for a public warehouse license shall be computed as follows, based on the capacity of that the public warehouse:

Capacity in Bushels	Annual Fee
1 to 100,000 . . . . .	\$ 250.00
100,001 to 150,000 . . . . .	275.00
150,001 to 250,000 . . . . .	300.00
250,001 to 300,000 . . . . .	325.00
300,001 to 350,000 . . . . .	350.00
350,001 to 400,000 . . . . .	375.00
400,001 to 450,000 . . . . .	400.00
450,001 to 500,000 . . . . .	425.00
500,001 to 600,000 . . . . .	450.00
600,001 to 700,000 . . . . .	475.00
700,001 to 800,000 . . . . .	500.00
800,001 to 900,000 . . . . .	525.00
900,001 to 1,000,000 . . . . .	550.00
1,000,001 to 1,750,000 . . . . .	725.00
1,750,001 to 2,500,000 . . . . .	850.00
2,500,001 to 5,000,000 . . . . .	1,100.00
5,000,001 to 7,500,000 . . . . .	1,350.00
7,500,001 to 10,000,000 . . . . .	1,550.00
10,000,001 to 12,500,000 . . . . .	1,700.00
12,500,001 to 15,000,000 . . . . .	1,850.00
15,000,001 to 17,500,000 . . . . .	2,000.00
17,500,001 to 20,000,000 . . . . .	2,150.00
Over 20,000,000 bushels . . . . .	add \$ 150



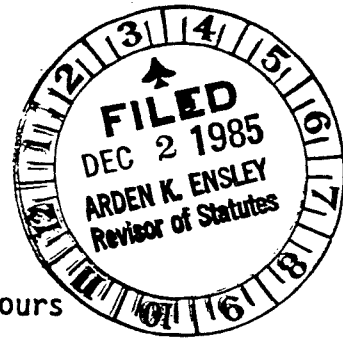
**APPROVED**  
ATTORNEY GENERAL

By *[Signature]* 10-14-85  
Asst.

DEPT. OF ADMINISTRATION

OCT - 9 1985

APPROVED BY *[Signature]*



(b) The charge for amending a warehouse license shall be \$50.00.

(c) The charges for each special or requested examination of a warehouse shall be:

(1) ~~\$15.00~~ \$20.00 per hour for each examiner. A minimum of four hours shall be charged;

(2) subsistence expenses for each examiner;

(3) mileage expenses. Mileage expenses shall be charged, per mile driven, at the rate per mile determined by the secretary of administration pursuant to K.S.A. 75-4607 or amendments thereto.

(d) Functional Units - - The location capacity shall be determined by the director of the "Kansas state grain inspection department" and shall be the capacity of a fully functional unit operated as a public warehouse.

(e) A functional facility shall be one which could operate independently if it was separated from other facilities in a merger. Any out-lying unit which is not a fully functional facility shall have its capacity included as part of the combined capacity of the nearest fully functional operating location.

(f) The annual license fee shall be the sum total of each functional unit and shall be assessed at your licensing period.

(Authorized by and implementing K.S.A. 1984 Supp. 34-228; effective, E-67-18, Sept. 13, 1967; effective Jan. 1, 1968; amended, E-69-7, May 28, 1969; amended Jan. 1, 1970; amended May 1, 1982; amended May 1, 1985; amended May 1, 1986.)

**APPROVED**  
ATTORNEY GENERAL

By JLM Asst.  
10-14-85

DEPT. OF ADMINISTRATION

OCT - 9 1985

APPROVED BY FDX

HOUSE CONCURRENT RESOLUTION NO. \_\_\_\_\_

A CONCURRENT RESOLUTION concerning the annual fee for a public warehouse license; requesting the modification of K.A.R. 25-4-4, as adopted by the director of the Kansas state grain inspection department and filed with the revisor of statutes on December 2, 1985.

Be it resolved by the House of Representatives of the State of Kansas, the Senate concurring therein: That the director of the Kansas state grain inspection department is hereby requested to modify K.A.R. 25-4-4, as adopted by the director of the Kansas state grain inspection department and filed with the revisor of statutes on December 2, 1985, as follows:

25-4-4. Fees and charges; warehouse division. (a) The annual fee for a public warehouse license shall be computed as follows, based on the capacity of the public warehouse:

Capacity in Bushels	Annual Fee
1 to 100,000.....	\$ 250.00
100,001 to 150,000.....	275.00
150,001 to 250,000.....	300.00
250,001 to 300,000.....	325.00
300,001 to 350,000.....	350.00
350,001 to 400,000.....	375.00
400,001 to 450,000.....	400.00
450,001 to 500,000.....	425.00
500,001 to 600,000.....	450.00
600,001 to 700,000.....	475.00
700,001 to 800,000.....	500.00
800,001 to 900,000.....	525.00
900,001 to 1,000,000.....	550.00
1,000,001 to 1,750,000.....	725.00
1,750,001 to 2,500,000.....	850.00
2,500,001 to 5,000,000.....	1,100.00
5,000,001 to 7,500,000.....	1,350.00

3-20-86 Hs. ASB  
Attachment II

7,500,001 to 10,000,000.....	1,550.00
10,000,001 to 12,500,000.....	1,700.00
12,500,001 to 15,000,000.....	1,850.00
15,000,001 to 17,500,000.....	2,000.00
17,500,001 to 20,000,000.....	2,150.00
Over 20,000,000 bushels.....	add \$ 150.00
for each 2,500,000 bushels or fraction.	

(b) The charge for amending a warehouse license shall be \$50.00.

(c) The charges for each special or requested examination of a warehouse shall be:

(1) \$20.00 per hour for each examiner. A minimum of four hours shall be charged;

(2) subsistence expenses for each examiner;

(3) mileage expenses. Mileage expenses shall be charged, per mile driven, at the rate per mile determined by the secretary of administration pursuant to K.S.A. 75-4607 ~~or~~ and amendments thereto.

~~(d) Functional Units-----The location capacity shall be determined by the director of the "Kansas state grain inspection department" and shall be the capacity of a fully functional unit operated as a public warehouse.~~

~~(e) A functional facility shall be one which could operate independently if it was separated from other facilities in a merger. Any out-lying unit which is not a fully functional facility shall have its capacity included as part of the combined capacity of the nearest fully functional operating location.~~

~~(f) The annual license fee shall be the sum total of each functional unit and shall be assessed at your licensing period.~~

Be it further resolved: That the Kansas legislature request the modification of K.A.R. 25-4-4, as adopted by the director of the Kansas state grain inspection department and filed with the revisor of statutes on December 2, 1985.

Be it further resolved: That the secretary of state be directed to transmit a copy of this resolution to the director of the Kansas state grain inspection department.

TO: MEMBERS OF THE HOUSE AGRICULTURE COMMITTEE

FROM: JACK SELZER, COUNSEL FOR WESTERN RETAIL IMPLEMENT AND  
HARDWARE ASSOCIATION

DATE: MARCH 20, 1986

RE: BILL NO. 544, KANSAS AGRICULTURAL EQUIPMENT DEALERSHIP  
ACT

The bill which you have before you reflects a compromise of a bill coming from the Senate Agriculture Committee. The compromise was reached between Western Retail Implement and Hardware Association, an association of 608 farm equipment dealers in the states of Kansas and Missouri, with 341 of these dealers located in the state of Kansas, and on the other side, the manufacturers of farm implements.

To understand the amount of compromise involved in this bill, one need only consider that the bill originally had 202 lines, of which 101 lines were deleted and 43 new lines were added to the legislation.

While the manufacturers do not endorse this legislation, they do not oppose this legislation because of the significant modifications made to this legislation resulting from the negotiations between the Association and the manufacturers.

With this background stated, I now turn to the bill with a brief explanation of the purposes for the bill. Section 1 of this bill provides that the purpose of the legislation is to prevent arbitrary or abusive conduct and to preserve and enhance the reasonable expectations for success in the business of distributing farm equipment.

The farm equipment dealer would like to avoid any legislation if the dealer could accomplish his or her goals through a private contact with each manufacturer. Unfortunately, the manufacturers of farm equipment have a bargaining position far superior to that of the independent dealer. Moreover, the manufacturers often times use this superior position to force upon the dealer contract terms which are unfair. It is not realistic to think that the implement dealer can sit across the table from a manufacturer and negotiate fair and equal terms in a dealership agreement, reflecting give and take by both sides. Rather, the dealership agreement is a take it or leave it proposition which, because of the investment of the independent implement dealership, gives the dealer only one choice--accepting the dealership agreement as drafted by the manufacturer.

This legislation is not unique. Indeed, the farm equipment dealers of Kansas seek protection which this legislature has

3-20-86 Hs. A.S.B.  
Attachment III



given to the Kansas automobile dealers who have statutory protection from cancellation, termination or non-renewal of a dealership unless there is reasonable justification. Moreover, there are a number of states nearby Kansas which have statutes protecting their farm equipment dealers. In particular, Illinois, Indiana, Michigan, Minnesota and Wisconsin all have very broad statutes affecting the manufacturer/dealer relationship. Indeed, it is from these statutes that the proposed bill has been drafted.

The provisions of substance begin in Section 3, where it provides that manufacturer cannot terminate, cancel, fail to renew or substantially change the competitive circumstances of a dealership agreement without good cause. This provision is a very important provision in the bill. Many dealership agreements provide that the manufacturer can cancel the dealership agreement without cause upon sixty (60) days written notice. For example, the Ford Dealership Sales and Service Agreement which I attached as Exhibit A provides in paragraph 14(e) that "If this agreement is not for a stated term as may be provided for in paragraph (g) hereof, Ford may terminate this agreement at will at any time giving the dealer at least 60 days prior written notice thereof. If this agreement is for a stated term, as provided in paragraph (g) hereof, Ford may elect not to renew this agreement upon giving the dealer written notice to such effect at least 60 days prior to the expiration of the stated term hereof." Another example of the contract right to terminate the dealership without good reason is the J.I. Case contract which I have attached as Exhibit B, which provides in paragraph 10.A. that "This Agreement may be terminated at any time for any reason . . . upon ninety (90) days written notice by Company to Dealer. . . ."

Implement dealers believe that such provisions in their contracts are most unfair. Often times, the dealer has established a successful business over a long period of years with an investment of substantial capital. His investment and hard work can be wiped out if the manufacturer were to cancel him upon sixty (60) days notice. We think that the manufacturer should only have the right to terminate for good cause. As you can see from the bill, we allow the manufacturer to define exactly what good cause means. "Good cause means and includes the failure by a farm equipment dealer to substantially comply with essential and reasonable requirements imposed upon the dealer by the dealership agreement, provided such requirements are not different from those requirements imposed on similarly situated dealers either by the terms or in the manner of their enforcement." The dealers want to see themselves treated in a fair, equal and consistent manner.

The bill continues with specific conditions that constitute good cause for termination. Indeed, there are eight specific conditions that constitute good cause for termination of the dealership. The first condition would be a situation in which

the farm equipment dealer transferred an ownership interest in the dealership without the manufacturer's consent. Another condition would be bankruptcy; another would be change in location without the approval of the manufacturer; another is a default under a security agreement; and so on.

Section 4 of the bill requires that the manufacturer give the dealer at least ninety (90) days prior written notice of termination, cancellation or non-renewal of the dealership agreement. Moreover, the notice must state the reasons constituting good cause for termination and give the dealer a sixty (60) day period in which to cure the claimed deficiency. The right to cure the deficiency does not apply to the conditions enumerated in -subsections (a) through (g) of the previous section.

Section 5 of the bill addresses trade practices of manufacturers which are unfair and, in most instances, illegal under various provisions of federal and state law. The problem is that these current laws are too narrow or technical in application to provide security to the implement dealer. Section 5(a) of the act provides that a manufacturer cannot coerce a dealer into ordering farm equipment which the dealer does not want to order. Subsection (b) prohibits three types of activities by manufacturers: (1) the tying of the sale of one piece of farm equipment to another piece of farm equipment; (2) the use of pressure to coerce the dealer into refusing to purchase farm equipment from another manufacturer; or (3) the use of price differentials to discriminate in the prices charges for farm equipment of like grade and quality sold by the manufacturer to similarly situated farm equipment dealers.

Section 6 of the bill makes clear that any provisions in a dealership agreement which is inconsistent with the bill are void and unenforceable.

Finally, Section 7 gives the remedy provisions of the bill. If the manufacturer violates this act, the dealer can bring an action against the manufacturer for damages, actual costs and reasonable attorneys' fees. In addition, the dealer can also receive injunctive relief and seek assistance of the Attorney General to enforce compliance. In seeking this protection, the dealers do not want to impose unreasonable restrictions on manufacturers. As applied, the provisions are sound business practices which allow problems to be addressed and cured. Rational businessmen do not take action "without cause" anyway. We are simply trying to prevent inequitable, unreasonable and unfair practices from being forced on dealers as a result of the disparity of power between the dealer and manufacturer. Such legislation is not unique or uncommon.



**Motor Company**  
**Ford Tractor Operations**

**DEALER SALES AND SERVICE AGREEMENT**  
**STANDARD PROVISIONS**

**1. DEFINITIONS**

As used herein, the following terms shall have the following meanings:

1. (a) "Dealer Locality" shall mean the geographic area designated in writing to the Dealer by Ford from time to time as the area of the Dealer's sales and service responsibility for each respective Product Line covered by this Agreement pursuant to paragraph F (i).
1. (b) "Dealer Price" shall mean, with respect to each Company Product to which it refers, the price to the Dealer established by Ford from time to time exclusive of any holdback, deposit or charge, any charge by Ford for taxes, handling, delivery, transportation or special items or services.
1. (c) "Branch" shall mean a division or wholly-owned subsidiary of the Dealer established by the Dealer, with the prior written approval of Ford, for the sale and service, under this Agreement, of Company Products at a location separate from the Dealer's principal place of business but within the Dealer Locality.

**2. OPERATION OF BUSINESS**

**2. (a) Sales Responsibility**

The Dealer shall promote vigorously and aggressively the sale of Company Products at retail to customers in the Dealer Locality and shall develop energetically and satisfactorily the potentials for such sales and obtain a reasonable share thereof; but the Dealer shall not be limited to the Dealer Locality in making such sales. To this end, the Dealer shall develop, maintain and direct a trained, quality sales organization and shall conduct aggressive advertising and sales promotion activities, making use to the greatest reasonable extent of Ford's advertising, sales promotion and merchandising material.

The Dealer's performance of his sales responsibility shall be measured by the Dealer's sales of Company Products both overall and with respect to each Product Line to customers within the Dealer Locality in volumes satisfactory to Ford with reference to such reasonable criteria as Ford may develop from time to time.

**2. (b) Service and Warranty Responsibility**

(1) The Dealer shall develop, maintain and direct a trained, competent service organization and shall render prompt, workmanlike, courteous and willing service, including warranty service as described below and any other services as may be directed by Ford, with respect to Company Products, all in accordance with such standards and procedures as from time to time may be established by Ford. To assist in accomplishing this, the Dealer shall keep on hand at all times a sufficient and representative stock of Genuine Parts for immediate service use.

(2) The Dealer shall not sell or offer for sale or use in the repair of any Company Product, as a Genuine Part, any part or accessory that is not in fact a Genuine Part.

(3) The Dealer shall perform warranty and policy service on Company Products, whether or not purchased from the Dealer. The warranties applicable to Company Products sold by Ford and resold by the Dealer under this Agreement shall be those set forth in the Ford Tractor Operations Warranty and Policy Manual covering such Company Products. The Dealer agrees to extend such warranties to the purchaser at the time of sale. Ford and the Dealer

shall promptly fulfill their respective obligations under such warranties. There shall be NO OTHER WARRANTY, express or implied, including any implied warranty of MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE or any other obligation on the part of Ford to the Dealer or customer with respect to any Company Product except the warranty extended pursuant to this subparagraph 2 (b) (3). The performance and administration of each warranty extended hereunder and the payment of claims under such warranty shall be as set forth in said Warranty and Policy Manual.

(4) The Dealer shall perform such predelivery preparation of Product Lines and issue to the purchasers such Warranty and Limitation of Liability forms as Ford may specify from time to time.

2. (c) **Place of Business, Facilities**

(1) The Dealer shall establish and maintain within the Dealer Locality at a location approved by Ford a place of business which, in the opinion of Ford (i) is of satisfactory size, layout, appearance and condition, (ii) contains adequate space for display, sales and service of Company Products, the sale of used products, customer parking and waiting, office functions and storage, and (iii) is equipped with adequate tools and equipment, all as will enable the Dealer to meet his sales and service responsibilities under this Agreement.

(2) As Ford may request, the Dealer shall establish and maintain Branches for the sale and/or service of Company Products at locations approved by Ford within the Dealer Locality. The Dealer shall require each of his Branches to provide facilities, tools and equipment adequate to meet the needs of each such Branch in light of the portion of the Dealer Locality to be served by it. The obligations and responsibilities assumed by the Dealer under this Agreement shall apply to any such Branch.

(3) The Dealer shall not move, substantially modify or alter his place or places of business or establish any other place of business, including Branches, for the sale or service of Company Products without the prior written consent of Ford.

2. (d) **Hours of Business**

The Dealer shall keep his place or places of business open for business during all hours and days customary in the trade and lawful for such operations in the Dealer Locality.

2. (e) **Capital**

The Dealer shall at all times employ in connection with his business and operations under this Agreement such total investment, net working capital, lines of credit and retail financing plans as may be necessary to enable the Dealer to meet his sales and service responsibilities under this Agreement.

2. (f) **Signs**

The Dealer shall acquire, erect and maintain signs of good appearance, compatible with design standards established by Ford from time to time and adequate to identify his place or places of business as an authorized dealer in Company Products. Such signs shall be subject to Ford's approval with respect to the display of any trademark or trade name used or claimed by Ford. Fulfillment of any separate Dealership Identification Agreement between the Dealer and Ford shall be deemed fulfillment of this subparagraph 2 (f). Ford will make available, at the request of the Dealer and at a mutually convenient time and place, personnel to provide counsel and advice regarding signs and identification.

2. (g) **Personnel**

The Dealer shall employ and train a sufficient number of competent personnel of good character, including, without limitation, managers, salesmen and mechanics, to fulfill all of the Dealer's responsibilities under this Agreement, and he shall cause such personnel to attend such training programs as Ford may conduct from time to time.

**2. (h) Accounting System**

The Dealer shall install and use in his operations in the sale and service of Company Products hereunder, an accounting and record keeping system acceptable to Ford; provided, however, that such system need not be exclusive of any other system the Dealer may wish to use.

**2. (i) Reports**

The Dealer shall furnish to Ford each month at the time and on the forms prescribed by Ford, a complete statement reflecting the true financial condition and the month and year-to-date operating results of the Dealer's business in Company Products and trade-ins thereon as of the end of the preceding month. The Dealer also shall promptly furnish to the Company a copy of any adjusted annual statement that may be prepared by or for the Dealer and submit such sales reports, registration cards, and other business, sales and service reports and documents as Ford may require from time to time. All such statements and reports shall set forth information with respect to the Dealer's Branches, if any, and shall be based, whenever applicable, upon the accounting system referred to in subparagraph 2 (h) hereof. Financial information furnished by the Dealer shall be handled on a confidential basis by Ford except as required by law or offered in evidence in judicial or other hearings, or included as an unidentified part of a composite or coded report.

**2. (j) Stocks**

The Dealer shall maintain at all times stocks of Company Products of an assortment and in quantities adequate in the opinion of Ford to meet current and anticipated demand therefor and to fulfill his sales and service responsibilities under this Agreement.

**2. (k) Orders**

The Dealer shall furnish Ford on forms designated by Ford (i) orders at times designated by Ford covering the numbers and models of Product Lines required by the Dealer and his Branches, if any, and (ii) orders on a monthly stock order or regular seasonal basis covering Genuine Parts.

**2. (l) Customer Handling**

The Dealer shall promptly investigate and handle satisfactorily all matters brought to his attention relating to the sale and servicing of Company Products, shall make regular contact with owners and users of Company Products in the Dealer Locality and shall report promptly to Ford the details of each inquiry or complaint relating to any Company Product which he cannot handle satisfactorily. The Dealer shall not make directly or indirectly any false or misleading statement or representation to a customer as to any Company Product or other item of purchase, as to the source, condition or capabilities thereof, as to the prices or charges therefor or the charges made by Ford for distribution, delivery, taxes or other items.

**2. (m) Trade Practices and Advertising**

The Dealer shall conduct business in a manner that will reflect favorably at all times on the good name and reputation of the Dealer, Ford, Company Products and other authorized dealers in Company Products and shall avoid in every way any "bait," deceptive, misleading, confusing or illegal advertising or business practice.

**2. (n) Inspection and Tests**

The Dealer shall allow persons designated by Ford, at reasonable times and intervals and during normal business hours, to examine his place or places of business, stocks of Company Products and all other tractors and equipment on his premises, to test equipment, to check and instruct the Dealer and his employes in the proper handling of warranty and other repairs and claims based thereon and to examine, copy and audit any or all of his records and documents relating in any way to the Dealer's operations in the sale and service of Company Products

hereunder. The Dealer shall maintain all records and documents relating to claims made upon or paid by Ford for a minimum of one (1) year in the case of warranty and policy claims and for a minimum of two (2) years in the case of any other claims. In addition to other remedies provided in this Agreement, failure to maintain records in compliance with Ford policy as herein provided or submission of improper claims may result in a chargeback against the Dealer's accounts at the option of Ford.

**2. (o) Compliance With the Law**

The Dealer shall comply with all applicable federal, state and local laws, rules and regulations in the ordering, sale and service of Company Products and used products, including without limitation those related to safety, emissions control and customer service.

**2. (p) Bulletins**

Ford from time to time will issue to the Dealer bulletins providing such details as to terms of sale including prices, resale or other incentives, guides for facilities, tools, equipment, capital, personnel, stocks and customer handling procedures and criteria for sales and service performance as may be appropriate in the circumstances.

**3. SALES TO OTHERS AND PURCHASES FROM OTHERS**

The Dealer reserves the right to make purchases from others without liability of any kind to Ford; provided, however, that the Dealer shall not be relieved of any of his responsibilities as set forth in this Agreement. Ford reserves the right to make sales, loans or leases to others (including without limitation to other dealers) and to appoint others or additional dealers to sell Company Products, in any case, without liability of any kind to the Dealer.

**4. CONSIDERATION OF ORDERS**

Ford shall make reasonable efforts to fill each order for Company Products that is accepted by Ford but shall not be liable in any respect for failure or delay in shipping any accepted order if such failure or delay is due wholly or in part to (i) a shortage of Company Products or a shortage of material, labor, transportation or utility service, (ii) any labor or production difficulty of Ford, any source supplying Company Products or components to Ford, or their suppliers, (iii) any governmental action, or (iv) any cause beyond Ford's reasonable control or without Ford's fault or negligence.

**5. DELIVERY OF COMPANY PRODUCTS**

Ford reserves the right to determine the method and routing for delivering Company Products sold to the Dealer under this Agreement. Where specific shipping instructions are not stated in the order, Ford will endeavor to ship over the best and most economical route. Ford shall not be responsible for guaranteeing rates or for delays in shipments. In cases where the order submitted by the Dealer specifies a date for Dealer pick-up at a Ford depot or other designated location and Company Products are not called for within ten (10) days of such date, Ford reserves the right to ship such Company Products via common carrier and the cost therefor shall be borne by the Dealer.

**6. PRICES AND CHARGES**

The Dealer shall pay Ford the Dealer Price for each Company Product purchased from Ford by the Dealer, plus any holdback, and Ford's charges, if any, for reimbursement for taxes, duties, transportation, handling, delivery or special items or services. Ford may change such Dealer Price, holdback, reimbursement or other charges at any time and from time to time without prior notice. Except as otherwise specified in writing by Ford, prices and charges shall be those in effect, and delivery to the Dealer shall be deemed made and the order filled, on the date of delivery to the carrier or to the Dealer, whichever occurs first. If Ford increases the Dealer Price

for any Company Product, the Dealer may cancel, by notice to Ford within ten (10) days after his receipt of notice of the increase, any orders for any such Company Product placed by him prior to receiving notice of the increase and unfilled at the time Ford receives his notice of cancellation.

## **7. TERMS AND TITLE**

### **7. (a) Payment**

Payment for each Company Product purchased by the Dealer shall be made in cash unless the invoice or Ford's then current and applicable payment plan provides otherwise, in which event the terms of the invoice or such plan shall govern. Receipt of any check, draft or other commercial paper shall not constitute payment until Ford has received cash in the full amount thereof. The Dealer shall pay all collection charges.

### **7. (b) Title**

Title to each Company Product purchased by the Dealer shall pass to the Dealer, or to the finance institution designated by him, upon delivery by Ford to a carrier or the Dealer, whichever occurs first, but Ford shall retain a security interest in and right to repossess any such Company Product until paid therefor.

### **7. (c) Risk of Loss and Claims**

Ford shall assume all risk of loss or damage to any Company Product purchased by the Dealer from Ford which is not borne by the carrier while the Company Product is in the possession of the carrier, provided the Dealer properly inspects and records any loss or damage of the Company Product upon receipt thereof. The Dealer shall cooperate with Ford in processing all claims for loss or damage of the Company Product in accordance with Ford's then current Warranty and Policy Manual.

### **7. (d) Demurrage and Diversion Liability**

The Dealer shall be responsible for and pay any and all demurrage, storage and other charges accruing after arrival of any shipment at its destination. In the event the Dealer shall fail or refuse for any reason (other than labor difficulty in the Dealer's place of business or any cause beyond the Dealer's control or without the Dealer's fault or negligence) to accept delivery of any Company Product ordered by the Dealer, the Dealer shall also pay Ford the amount of all expenses incurred by Ford in shipping such Company Product to the Dealer and in returning such Company Product to the original shipping point or diverting it to another destination; but in no event shall the Dealer pay Ford more for any such diversion than the expense of returning such Company Product to its original shipping point.

### **7. (e) State and Local Taxes**

The Dealer hereby represents and warrants that all Company Products purchased from Ford are purchased for resale in the ordinary course of the Dealer's business. The Dealer further represents and warrants that the Dealer has complied with all requirements for his collection and/or payment of applicable sales, use and like taxes, and has furnished or will furnish evidence thereof to Ford. These representations and warranties shall be deemed a part of each order given by the Dealer to Ford.

The Dealer agrees that, as to any Company Product put to a taxable use by the Dealer, or in fact purchased by the Dealer other than for resale, the Dealer shall make timely and proper return and payment of all applicable sales, use and like taxes, and shall hold Ford harmless from all claims and demands therefor.

## **8. CHANGES WITH RESPECT TO COMPANY PRODUCTS**

Ford may change the design of any Company Product, or add any new or different Company Product at any time, and from time to time, without notice or obligation to the Dealer, including any obligation with respect to any Company Product theretofore ordered or purchased by or delivered to the Dealer. Ford, at any time and without notice, may discontinue any Company Product without liability to the Dealer.

## **9. OWNER LITERATURE**

The Dealer shall complete, execute and deliver to his retail purchasers of Company Products such Warranty Facts Booklet, Owner's Manual and other literature as may then currently be furnished by Ford or other suppliers, as the case may be. The Dealer shall promptly fulfill all of the terms of any such literature.

## **10. DEALER NOT AGENT OF FORD**

This Agreement does not in any way create the relationship of principal and agent between Ford and the Dealer and under no circumstances shall the Dealer be considered to be an agent of Ford. The Dealer shall not act or attempt to act, or represent himself, directly or by implication, as an agent of Ford or in any manner create or attempt to create any obligation on behalf of or in the name of Ford.

## **11. TRADEMARKS AND TRADE NAMES**

### **11.(a) Limitations on Use**

The Dealer shall not use, or permit the use of, the word "Ford" or any other trademark or trade name used or claimed by Ford or any of its affiliates, or coined words or combinations containing the same or parts thereof, in any way whatsoever without Ford's prior written approval. The Dealer further agrees that he shall discontinue any approved use, as herein provided, upon the request of Ford.

### **11.(b) Protection and Non-Contest**

The Dealer shall promptly carry out all instructions issued from time to time by Ford, or by any of its affiliates or by other suppliers to protect and promote any trademark or trade name used or claimed by them, respectively, and the Dealer agrees that he shall not contest their respective rights to exclusive use of any such trademark or trade name.

## **12. USE OF FORD'S SERVICES**

The Dealer may avail himself of such promotional, business management, procurement and financial services and assistance as may be extended from time to time by Ford.

## **13. PRICE REDUCTION**

If Ford reduces the Dealer Price for any new, current model of a Product Line (except with respect to any current model of a Product Line being discontinued by Ford and except Dealer Price reductions resulting from the application of any law, government regulation or order), Ford shall refund or credit to the Dealer, on each new, unused and unsold unit of a Product Line of the same current model which is in the possession of the Dealer on the effective date of such price reduction, the difference between such reduced Dealer Price and the Dealer Price at which the Dealer purchased such unit of a Product Line (less any amount previously credited or refunded to the Dealer) provided it was purchased from Ford during the twenty-four (24) months next preceding such effective date. The Dealer shall be entitled to the refund or credit described in this paragraph only if a claim for such adjustment is made to Ford in writing within ten (10) days after the effective date of such Dealer Price reduction. In case any unit of a



Product Line is the subject of any trust instrument or similar agreement, Ford shall have the right to pay all or part of any refund or credit thereon to the holder of such instrument or agreement.

Ford shall have no obligation to make any payments under this paragraph with respect to (i) any reduction in Ford's charges for distribution, handling, delivery, advertising, or taxes, (ii) any change in discounts that may be offered, or (iii) any sales incentive or other similar payments offered by Ford to the Dealer.

#### **14. TERMINATION OR NONRENEWAL**

##### **14.(a) By the Dealer**

The Dealer may terminate, or not renew, this Agreement at any time at will by written notice given to Ford at least thirty (30) days prior to the effective date of such termination or non-renewal.

##### **14. (b) By Ford Due to Events Controlled by the Dealer**

The following represent events which are substantially within the control of the Dealer and over which Ford has no control, and which are so contrary to the intent and purpose of this Agreement as to warrant its termination or nonrenewal by Ford:

(1) Any transfer or attempted transfer by the Dealer of any interest in, or right, privilege, or obligation under, this Agreement, or any transfer by operation of law or otherwise of the principal assets of the Dealer that are required for the conduct of his business under this Agreement, or any change, however accomplished, in the direct or indirect ownership or operating management of the Dealer as set forth pursuant to paragraph E hereof, without Ford's prior written consent;

(2) Any misrepresentation in applying for this Agreement by the Dealer or any person named pursuant to paragraph E; the submission by the Dealer to Ford of any false or fraudulent application or claim or statement in support thereof for warranty, policy or campaign adjustments or for wholesale parts or sales incentives or for any other refund, credit, rebate, incentive, allowance, discount, reimbursement or payment under any program of Ford, or the acceptance by the Dealer of any payment for any work not performed by the Dealer in accordance with the provisions of this Agreement or the Warranty and Policy Manual;

(3) Insolvency of the Dealer, inability of the Dealer to meet debts as they mature, filing by the Dealer of a voluntary petition under any bankruptcy or receivership law, adjudication of the Dealer as a bankrupt or insolvent pursuant to an involuntary petition under any such law, appointment by a court of a temporary or permanent receiver, trustee or custodian for the Dealer or the Dealer's assets, or execution of an assignment by the Dealer for the benefit of creditors, dissolution of the Dealer, or failure of the Dealer for any reason to function in the ordinary course of business or to maintain the Dealer's place or places of business open for business for a period of ten (10) consecutive days or more;

(4) Conviction in a court of original jurisdiction of the Dealer or any person named pursuant to paragraph E for any violation of law, or any conduct by any such person unbecoming a reputable businessman, or disagreement between or among any persons named pursuant to paragraph E, which in Ford's opinion tends to affect adversely the operation or business of the Dealer or the good name, goodwill or reputation of the Dealer, Ford, other authorized dealers of Ford, or Company Products; or

(5) Failure of the Dealer to fulfill any provisions of paragraph 7 (as to terms and title, including payment for Company Products), or paragraph 11 (as to trademarks or trade names), or to pay Ford any sum due pursuant to any agreement between Ford and the Dealer.

Upon occurrence of any one or more of the foregoing events, Ford may terminate this Agreement by giving the Dealer written notice of termination, effective immediately.

**14. (c) By Ford for Nonperformance by Dealer of Sales, Service, Facilities, or Other Responsibilities**

If the Dealer shall fail to fulfill any of his responsibilities with respect to sales and service of any Product Line, or in maintaining a place of business and proper facilities, or if he shall fail to discharge any of the other responsibilities set forth in paragraph 2 of this Agreement, Ford shall notify the Dealer of such failure or failures, shall offer to review promptly with the Dealer the reasons or grounds which, in Ford's opinion, establish such failure or failures on the part of the Dealer and shall provide the Dealer with a reasonable opportunity to cure the same. If the Dealer fails or refuses to cure the same within a reasonable time after such notice, Ford may terminate or not renew this Agreement by giving the Dealer at least thirty (30) days prior written notice thereof.

**14. (d) By Either Party**

Either party may terminate or not renew this Agreement by written notice given to the other, not less than fifteen (15) days prior to the effective date of such notice, in any of the following events:

(1) If Ford or the Dealer requires a license for the performance of any responsibility under this Agreement in any jurisdiction where this Agreement is to be performed and if either party shall fail to secure and maintain such license, or if such license is suspended or revoked, irrespective of the cause or reason; or

(2) In the event of the death or physical or mental incapacity of any owner of the Dealer named pursuant to paragraph E; provided, however, that in order to facilitate orderly termination and liquidation of the dealership, Ford shall defer for a period of three (3) months to one (1) year, as Ford may determine, the exercise of its right to terminate in such event if the executor or representative of such deceased or incapacitated owner shall so request and shall demonstrate the ability to carry out the terms and conditions of this Agreement.

**14. (e) By Ford at Will**

If this Agreement is not for a stated term as may be provided in paragraph G hereof, Ford may terminate this Agreement at will at any time by giving the Dealer at least sixty (60) days prior written notice thereof. If this Agreement is for a stated term, as provided in paragraph G hereof, Ford may elect not to renew this Agreement upon giving the Dealer written notice to such effect at least sixty (60) days prior to the expiration of the stated term hereof.

**14. (f) By Ford Upon the Offer of a New Agreement**

Ford may terminate this Agreement at any time by giving the Dealer at least thirty (30) days prior written notice thereof in the event Ford offers a new or amended form of agreement to its authorized dealers in Company Products.

**14. (g) By Ford Upon Termination of Another Ford Tractor Operations Dealer Sales and Service Agreement**

The Dealer acknowledges that, where Ford has issued the Dealer more than one (1) Ford Tractor Operations Dealer Sales and Service Agreement, Ford, in order to be fully competitive, must have the right to terminate or not renew this Agreement in the event the Dealer ceases for any reason to hold any one of such other agreements with Ford. Accordingly, the Dealer agrees that, in the event the Dealer for any reason shall give or be given notice of termination or non-renewal of any other Ford Tractor Operations Dealer Sales and Service Agreement, Ford, within a reasonable time thereafter, may terminate or not renew this Agreement by written notice given to the Dealer, effective after fifteen (15) days or upon the same date as of the effective date of such other notice of termination or nonrenewal, whichever is later.

**15. RIGHT OF FORD TO APPOINT DEALERS**

The Dealer agrees that Ford has the right to select the persons it shall appoint as dealers in Company Products or to distribute Company Products and that it may decline to appoint as an

authorized dealer in Company Products any purchaser or prospective purchaser of any of the assets or capital stock of the Dealer upon the termination or nonrenewal of this Agreement or otherwise.

## **16. OBLIGATIONS UPON TERMINATION**

Upon the effective date of any termination or nonrenewal of this Agreement, all orders from the Dealer for Company Products that have not been shipped by Ford shall be deemed cancelled without liability to either party, and the Dealer shall promptly (i) pay Ford all sums owed by the Dealer to Ford, (ii) remove all signs owned or controlled by him which bear any trademark or trade name of Ford, (iii) discontinue the use of stationery, sales literature and the like bearing any trademark or trade name of Ford, and (iv) cease to represent in any way that he is or was an authorized dealer in Company Products.

## **17. REACQUISITION OF CERTAIN COMPANY PRODUCTS UPON TERMINATION OR NONRENEWAL**

### **17. (a) Ford Reacquisition Obligation**

If this Agreement is terminated at will by Ford pursuant to subparagraph 14 (e) or if terminated or not renewed by the Dealer pursuant to subparagraph 14 (a), Ford shall reacquire from the Dealer, and the Dealer shall return to Ford, forthwith upon the effective date of such termination or nonrenewal, each new, unused and undamaged Company Product in the Dealer's stock and unsold on such effective date, provided the same (i) is in first-class salable condition, (ii) is listed in Ford's then current Price and Data Book or Parts Price List, and (iii) was purchased from Ford. The price for any reacquired unit of a Product Line shall be the price paid therefor by the Dealer to Ford, exclusive of any charges for distribution, delivery, handling, advertising and taxes, less any amount previously credited or refunded to the Dealer thereon. The price for any reacquired Genuine Part shall be the lower of (i) 90% of the price paid therefor by the Dealer to Ford, or (ii) 90% of the current Dealer Price therefor less all allowances or discounts paid or applicable allowances or discounts currently offered thereon by Ford and less the percentage of such price representing the freight currently being prepaid by Ford on stock orders.

### **17. (b) Ford Reacquisition Option**

If this Agreement is terminated or not renewed by Ford pursuant to paragraph 14 (b), (c) or (d), or by the Dealer pursuant to paragraph 14 (d), Ford shall have the option, but not the obligation, to reacquire Company Products as described in subparagraph 17 (a) above; provided, however, that (i) Genuine Parts shall be limited to those listed in the current "Dealer Parts Return Program" and (ii) the price for Company Products reacquired under this subparagraph shall be negotiated by the Dealer and Ford, but in no case shall they be more than the prices as computed under subparagraph 17 (a). Such option may be exercised by written notice to the Dealer given within thirty (30) days after the effective date of termination or nonrenewal.

### **17. (c) Additional Option**

If this Agreement is terminated by Ford or not renewed under any provision of paragraph 14, Ford shall have the option, but not the obligation, to reacquire from the Dealer any or all products previously sold by Ford Tractor Operations and not described in subparagraph 17 (a); in such circumstances Ford shall have the option to purchase, or to retake without payment if originally furnished to Dealer without charge, any or all sales promotion, advertising and training materials, tools and signs, in the possession of the Dealer. Such option may be exercised by written notice to the Dealer given within thirty (30) days after the effective date of termination or nonrenewal. If payment is to be made for any item reacquired under this paragraph, the price shall be negotiated by the Dealer and Ford.

**17. (d) Packaging of Reacquired Goods**

All items reacquired or purchased by Ford pursuant to subparagraph 17 (a), (b) or (c) above shall be packed, boxed and/or crated and shipped freight prepaid at the Dealer's expense to Ford at the destination specified by Ford, shall be delivered, sold and paid for free and clear of all claims, liens and encumbrances after compliance with all applicable bulk sales or similar acts and shall be transferred by warranty bills of sale satisfactory to Ford. Upon the Dealer's signing and delivering a general release to Ford in a form satisfactory to Ford, the Dealer will be presented with a check from Ford in payment of such items, less any sums due to Ford.

**18. NEW AGREEMENT**

The termination or nonrenewal of this Agreement by Ford in connection with the offer by Ford of a new Ford Tractor Operations Dealer Sales and Service Agreement for one or more Company Products to the Dealer or the Dealer's successor in interest shall not give rise to the rights and obligations provided in paragraphs 16 and 17 hereof with respect to the Company Products covered by such new agreement, unless otherwise specified by Ford in writing.

**19. ACKNOWLEDGMENT**

This Agreement terminates and supersedes all other agreements concerning the Dealer's business in Company Products and constitutes the entire agreement between the parties with respect to the subject matter hereof.

The Dealer represents that (i) no statements have been made by Ford which in any way modify any of the provisions of this Agreement or would prevent this Agreement from being fully effective in accordance with its terms, and (ii) he has decided to become an authorized dealer in Company Products and to make the investments necessary to become such a dealer, solely in reliance on his own investigation and appraisal of present and future conditions and expectations in the Dealer Locality and not in reliance on any statements made or documents exhibited to the Dealer by any of Ford's representatives. The Dealer further acknowledges that he has voluntarily entered into this Agreement and that each of its provisions is reasonable, fair and equitable.

**20. NO IMPLIED WAIVERS**

Except as expressly provided in this Agreement, the waiver by either party, or the failure by either party to claim a breach, of any provision of this Agreement shall not constitute a waiver of any subsequent breach, or affect in any way the effectiveness, of such provision.

**21. TRANSACTIONS AFTER TERMINATION NOT A RENEWAL**

In the event either party has any business relations with the other party after termination of this Agreement, such relations shall not constitute a renewal of this Agreement or a waiver of such termination, but all such transactions shall be governed by terms identical with the provisions of this Agreement unless the parties execute a new and different agreement.

**22. LIMITATIONS OF FORD'S LIABILITY**

This Agreement contemplates that all investments by or in the Dealer shall be made, and the Dealer shall purchase and resell Company Products, in conformity with the provisions hereof but otherwise in the discretion of the Dealer and the Dealer's owners. Except as herein specified, nothing herein contained shall impose any liability on Ford in connection with the Dealer's operations under this Agreement or otherwise or for any expenditure made or incurred by the Dealer in preparation for performance, or in performance, of the Dealer's responsibilities under this Agreement.

### **23. NOTICES**

Any notice or designation required or permitted by this Agreement shall be in writing and shall be by personal delivery or by first class mail, postage prepaid. Notices to Ford shall be delivered or mailed to the District Manager of the area in which the Dealer is located. Notices to the Dealer shall be delivered or mailed to any person designated pursuant to paragraph E as having managerial authority or to the Dealer at the Dealer's principal place of business as described herein. Notices given by mail shall be deemed given when deposited in any letter box of the U.S. Postal Service.

### **24. AMENDMENT**

Notwithstanding anything in this Agreement to the contrary, Ford shall have the right to amend, modify or change this Agreement in case of legislation, government regulation or changes in circumstances beyond the control of Ford that might affect materially the relationship between Ford and the Dealer.

### **25. MICHIGAN AGREEMENT**

The parties intend this Agreement to be a Michigan agreement and to be construed in accordance with the laws of the State of Michigan.

### **26. SEPARABILITY OR TERMINATION**

If any provision of this Agreement is invalid or unenforceable under the law of the place where it is to be performed, Ford may elect to terminate this Agreement in its entirety, or to consider this Agreement divisible as to such provision and such provision inoperative, and to continue the remainder of this Agreement in full force and effect as if such provision had not been included herein.

## AGRICULTURAL DEALER AGREEMENT

J. I. CASE COMPANY, a Delaware corporation, (hereinafter called "Company"), and the undersigned dealer (hereinafter called "Dealer") agree as follows:

- |   |  |
|---|--|
| <b>Appointment of Dealer</b>              | 1. Company hereby appoints Dealer an authorized Company Dealer to be primarily responsible for the development of the Dealer's Trade Area as hereinafter defined. Dealer accepts this appointment and agrees that the relationship between Dealer and Company shall be governed by the terms and conditions of this Agreement.   |
| <b>Trade Area</b>                         | 2. Dealer's Trade Area shall be that area defined as such in writing by the Company as soon as practical after the Dealer's agreement to the terms hereof.   |
| <b>Products</b>                           | 3. Products covered by this Agreement are those items listed in Exhibit A, attached hereto, together with attachments and repair parts therefor, all of which are collectively referred to herein as "Products".<br><br>Company grants to Dealer the right to purchase Products, subject to the terms and conditions of this Agreement and to Company's applicable Schedule of Discounts and Terms as published from time to time.   |
| <b>Facilities</b>                         | 4. Dealer agrees to provide and maintain at the location(s) specified in Exhibit A, attached hereto, suitable facilities for the sale, service, display and proper storage of products. Dealer will establish and maintain facilities at such other location(s) as may be mutually agreed upon by the Company and Dealer. Dealer agrees not to change the location(s) of Dealer's place of business as listed in Exhibit A without the prior written consent of Company.   |
| <b>Sales and Service</b>                  | 5. Dealer Agrees to use Dealer's best efforts in the promotion and sale of Products in order to achieve sales objectives and market penetration within Dealer's Trade Area satisfactory to Company. Dealer further agrees to maintain at all times a high standard of service in Dealer's Trade Area.<br><br>In order to carry out these responsibilities, Dealer agrees to: (a) employ and maintain an efficient staff of sales, service and other personnel, adequately trained to carry out Dealer's responsibilities under this Agreement; (b) purchase, display, demonstrate, properly store and actively promote the sale of all of the Products; (c) participate in Company's advertising and sales promotion programs; (d) display Company identification signs of the type and in a manner and in places approved by Company; (e) maintain an adequate inventory of each of the Products; (f) render prompt, workmanlike, courteous and willing service, including warranty and non-warranty service, with respect to all Products in Dealer's Trade Area, regardless of when, where or by whom sold; (g) provide service equipment and an adequate supply of spare parts necessary to meet promptly the service needs of users of Products in Dealer's Trade area; (h) at all times meet Company certification standards; (i) send Dealer personnel to conference and schools provided by Company; (j) deliver Products only after they have been properly set up, adjusted and inspected, a copy of the operator's manual has been furnished to the purchaser, and the purchaser or anyone he designates has been instructed as to the sale and proper operation of the Products; (k) abide by and cooperate with Company's Equipment Transfer Policy; (l) submit pre-delivery, warranty registration and customer information documents promptly to Company; (m) meet such other reasonable standards of performance as may be established by Company. |
| <b>Operating Standards, Certification</b> | 6. Dealer agrees to comply with operating standards and certification requirements for the sales, service, and other dealer functions which are determined by Company to be necessary to provide adequate representation of Company's Products. These operating standards and certification requirements will be communicated by Company in writing to Dealer from time to time.   |

**Dealer  
Performance  
Review**

7. In order that a satisfactory level of Dealer performance in meeting the operating standards and certification requirements defined by Company be maintained, Company shall conduct an annual review of Dealer's performance in Dealer's Trade Area. Dealer agrees to make available upon the occasion of such review those of Dealer's employees whose attendance would contribute to the overall value of the review. Specific deficiencies which are noted, together with conclusions and recommendations developed from the review, will normally be incorporated into a written report which shall be supplied to Dealer for study and initiation by Dealer of appropriate corrective action. Dealer will be expected to make reasonable progress toward correcting any deficiencies noted during the review.

**Sales To  
Dealer**

8. All orders for Products shall be considered accepted only if accepted by Company in writing or by shipment. All orders will be subject to the Company's applicable Schedule of Discounts and Terms in effect when order is placed by Dealer. Dealer agrees to order Products on Company's order forms when such forms are made available to Dealer. Company agrees that it will at all times use its best efforts to ship promptly, but it shall not be responsible for failure to ship on time or fill orders where prevented by any cause beyond Company's reasonable control, or if the demand for any Products shall exceed Company's available supply.

The prices which Dealer shall pay for the Products shall, unless otherwise agreed to in writing, be established by Company and in effect on date of shipment of Products, such prices to be determined by then current Price Lists, Price Bulletins, and applicable Schedule of Discounts and Terms as published and amended from time to time. Delivery of Products by Company to any carrier for transportation to Dealer shall constitute delivery to Dealer and Dealer shall bear all risk of physical loss or damage thereafter.

**Warranty**

9. COMPANY MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS), EXCEPT THOSE SET FORTH IN COMPANY'S CURRENT APPLICABLE PUBLISHED WARRANTY POLICIES AND PROCEDURES. Dealer agrees to deliver to purchasers at the time of each retail sale the document containing the ~~Car~~ Express Limited Warranty to Retail Buyer prescribed by Company and in force at the time of such sale. Dealer is not authorized to assume for Company any additional obligations or liabilities in connection with the sale of Products covered by this Agreement, and Dealer agrees not to do so. Company and Dealer shall promptly fulfill their respective obligations with respect to any warranty claims.

Company will reimburse Dealer for all warranty service performed on Products in accordance with Company's warranty reimbursement policies and procedures in effect at the time warranty work is performed.

**Duration and  
Termination**

10. This Agreement shall continue in effect until termination by one or both of the parties as hereinafter provided.
- A. This Agreement may be terminated any any time for any reason upon thirty (30) days' written notice by Dealer to Company, or upon ninety (90) days' written notice by Company to Dealer, or as mutually agreed upon in writing by both parties, provided that, prior to any notice of termination hereunder, Company shall provide to Dealer a written statement of the specific reasons which may lead to Dealer's termination, or
- B. Company may terminate this Agreement immediately upon the occurrence of any of the following events:
1. Dealer's failure to pay debts as they mature, or making any assignment for benefit of creditors, or becoming subject to any receivership, insolvency or bankruptcy proceedings.
  2. Cancellation, suspension or other revocation of licenses, permits or authorizations necessary to conduct a business in accordance with this Agreement.
  3. Sale, lease or other transfer of Dealer's assets which in Company's opinion may affect the ability of Dealer to operate the business pursuant to this Agreement.

4. Any false statement, representation or claim by Dealer to Company.
  5. Dissolution or liquidation if Dealer is a partnership or corporation.
  6. Change in the ownership or control of Dealer, whether due to death or otherwise. As used herein, "change in ownership" shall refer to any event which may affect the control of Dealer's business, and shall without limitation include any addition to or subtraction from the partners involved in ownership of Dealer's business and any change in the ownership of Dealer's stock if Dealer is a corporation.
  7. Default in any indebtedness by Dealer to Company or J. I. Case Credit Corporation, or notification to Company of a termination of significant lines of credit or the withdrawal of a guarantee of indebtedness by a personal guarantor.
  8. Dealer's failure to perform or violation of any provision of this Agreement.
- Dealer agrees to notify Company in writing of the occurrence of any of the events described in this paragraph 10-B.

**Succession in  
the Event of  
Termination Due  
to Death**

11. In the event of termination because of the death of a Dealer owner, Company will:
  - A. For a period of thirty (30) days from date of death complete delivery of available Products to retail customers, provided such customers are, in Company's opinion, acceptable credit risks.
  - B. Defer the termination and continue to operate under the provisions of this Agreement for a period of 180 days from date of death, provided that:
    1. written request therefore is made within thirty (30) days of the date of such death by the court-appointed representative(s) of the deceased person and all other persons having an ownership interest in the business; and
    2. necessary approval to continue to operate the business is obtained from the proper legal authorities.

In the event Dealer, prior to death, shall have in a signed and written document sent to Company designated one or more persons as nominees to succeed Dealer, and Company shall not have rejected such designee(s) in writing prior to Dealer's death, Company shall not object to operation of the dealership by such persons during the period of deferral of termination provided for herein, and shall give due consideration to offering a new Dealer Agreement to such designee(s) during or at the conclusion of such period. If the effective date of termination is deferred as provided herein, this Agreement shall automatically terminate:

- (a) upon the execution of a new Dealer Agreement with a new owner or owners of Dealer's business if such persons have successfully reorganized the business and are acceptable to Company as Dealer principals; or
- (b) at the expiration of said 180-day period, whichever occurs first.

However, Company at all times retains its termination rights under paragraph 10-B of this Agreement.

**Effect of  
Termination**

12. Upon termination of this Agreement:
  - A. Company is relieved of any obligation to make any further shipments hereunder except as provided for in paragraph 11-A above, and may cancel, without liability, Dealer's unshipped orders for Products.
  - B. Neither party shall be released from the payment of any sum then owing to the other.
  - C. All indebtedness of Dealer to Company and J. I. Case Credit Corp. shall become immediately due and payable, and shall be paid immediately by Dealer to Company and J. I. Credit Corp.
  - D. On any Products which may be shipped after termination or notice thereof, Company may establish terms of cash on delivery or cash prior to shipment.



- E. Dealer will cease to operate as or represent that Dealer is an authorized Company Dealer and will discontinue use of any identification which associates Dealer with Company.
- F. Dealer will remove all signs and advertising displays bearing the name "J. I. Case" or "Case" or "International" or "International Harvester" or any other trade names or trademarks of Company or any of its affiliated companies from Dealer's business establishment, and thereafter will not use such names and trademarks in connection with any business conducted by Dealer.
- G. Dealer will return and deliver to Company all catalogs, price lists, service manuals, bulletins, owner's manuals and current advertising material, and other material or literature relating to the sale, merchandising, operating or servicing of Products which were furnished to Dealer by Company. Any charges (except for transportation) paid by Dealer to Company for such material which is current will be credited to Dealer when such material is received by Company.
- H. Dealer agrees to deliver to Company all sales records, ownership lists, service history records and any other material of any kind relating to the sale, operation or servicing of Products, including repair parts, covered by this Agreement.
- I. Neither Company nor Dealer shall be liable to the other for any damages caused by the termination of this Agreement, whether based upon loss of anticipated sales or prospective profits, expenditures, investments or other matters related to the business of the parties.

**Repurchase of Inventory And Equipment By Company Upon Termination**

- 13. If Dealer, within twenty (20) days of the effective date of termination of this Agreement, notifies Company in writing that it desires to resell to Company any of the following items purchased by Dealer from Company, or if Company, at its option, desires to repurchase such items, Company will purchase and Dealer will sell, pursuant to the terms of this paragraph 13, the following:
  - A. All new, current, undamaged, salable and unused Products and attachments thereof, provided they contain all parts and accessories as shipped to Dealer. The price to be paid by Company shall be the net price charged to Dealer (but not more than the current net price) plus transportation cost previously paid or incurred by Dealer, less any cash or other discounts which may have been allowed or paid thereon by Company.
  - B. All new, current, undamaged, salable and unused parts. The return of and payment for all such parts is subject to and shall be made in accordance with the applicable provisions in the latest Parts Return Policy issued by Company. Dealer shall be responsible for proper identification of all such parts.
  - C. Any business signs in good condition, which were sold to Dealer by Company, bearing trade names or registered trademarks of Company. The amount allowed for each such sign will be the amount paid by Dealer to Company for such signs less annual depreciation of 20%. In the case of signs more than five years old, the amount allowed shall be that amount agreed upon by Company and Dealer.

Dealer will return all such items, within thirty (30) days after notification to return is given by Company to Dealer. All items returned to Company pursuant to this paragraph 13 shall be packed and loaded by Dealer, at no cost to Company, and returned to destinations specified by Company. Upon receipt of said items, Company shall inspect the same and shall as soon as practicable issue credit for all such items so returned which, in its judgment, meet the requirements specified herein.

Dealer, under this Section, shall not be entitled to payment or credit until Dealer furnished evidence satisfactory to Company that Dealer has complied with all Bulk Sales and other applicable laws and that such Products are free and clear of all claims, liens and encumbrances.

**Transactions  
After Notice  
Of Termination  
And After  
Termination**

14. Company or anyone it may designate shall be privileged to do the following without being required to wait until the effective date of termination, and without incurring any liability or responsibility to Dealer: (a) negotiate and/or consummate arrangements for another dealer to take over some or all of Dealer's Trade Area after the termination of this contract; and (b) supply any of Dealer's customers with Products and service during the termination notice period.

In the event the parties have any business transactions between Dealer's receipt of notice of termination and termination or after termination of this Agreement, such transactions shall not be construed as renewal of this Agreement nor as a withdrawal or waiver of such termination, but all such transactions shall be governed by terms identical to the provisions of this Agreement.

**Change of  
Trade Area**

15. In the event Dealer inadequately promotes or services the Products in any portion of Dealer's Trade Area, Company shall have the right to withdraw any such portion of Dealer's Trade Area, upon thirty (30) days' written notice to Dealer.

**Responsibility**

16. Company assumes no responsibility and shall not be liable for any commission or damages should any Products be shipped into or sold in Dealer's Trade Area by another dealer. The term "dealer" as used in this Agreement shall also include Company owned retail stores.

**Applications  
of Dealer  
Credit**

17. While this Agreement is in effect, and following its termination, Company may apply any amount which it or its subsidiaries or affiliates owe Dealer to any obligations of Dealer to Company or to any subsidiary or affiliate thereof.

**Reports,  
Accounting  
Records, and  
Inspections**

18. In order that Company may anticipate future requirements for Products, Dealer agrees that when requested by Company it will submit estimates of its anticipated future requirements for Products. Such estimates shall not constitute orders by Dealer and shall not be binding on Dealer.

Dealer will install, maintain and keep current an accounting system acceptable to Company, and will submit such financial reports and records as Company may request from time to time. Dealer will also submit to Company within 75 days after the end of its fiscal year certified and audited balance sheets and operating statements for the year. Dealer will maintain and submit current reports of sales, owner registration and inventory, service and warranty reports and such other reports as may be requested by Company.

Dealer will permit Company or its authorized representatives during business hours to enter and inspect Dealer's place of business and facilities, and to examine dealer's inventory, records, accounts and all supporting data of Dealer's business, and to make copies of any such records of accounts.

**Indemnification  
and Insurance**

19. Dealer shall keep all Products and other items in which Company has a security interest, and which are under the Dealer's direct or indirect control, insured against all risk of physical loss or damage to such items, in an amount which shall be sufficient to prevent Company from sustaining any financial loss. This insurance policy will name Company as additional insured, and provide that in the event of loss the insurer will pay to the insureds as their interest may appear, and Dealer will furnish to Company certificates of such insurance which shall provide for ten (10) days' prior written notice to Company of cancellation.

Dealer shall carry public liability insurance with bodily injury and property damage limits satisfactory to Company. Dealer shall furnish to Company certificates of such insurance, which shall provide for ten (10) days' prior written notice to Company of cancellation.

- Taxes** 20. Dealer shall pay all license fees, sales, use, personal property, and excise taxes, duties, and any other fees, assessments or taxes which may be assessed or levied by governmental authority against any Products which are shipped to, or are in the possession of Dealer, and will hold Company harmless therefrom
- Trademarks and Names** 21. Dealer agrees not to use the names "J I Case", "Case", "International", or "International Harvester", or any other trademark or trade name of Company or any of its affiliated companies in connection with Dealer's business except as specifically approved in writing by Company. Such approval is not required where items containing such marks or names are furnished by Company.
- Sale To Others** 22. It is understood that Company retains the right to select those to whom it will sell, loan or lease Products, including such parties as the following:
- A. Any government or any agency, institution or subdivision thereof;
  - B. Manufacturers for use by them in equipment of their manufacture;
  - C. Education, charitable and religious institutions or agencies;
  - D. Company National Account Customers;
  - E. Authorized rental yards.
- Discontinuance and Modification** 23. Company may discontinue the manufacture of any Product and make changes and improvements at any time in the specifications, construction or design of Products without incurring any obligation to Dealer or customers of Dealer. Products so changed or improved will be accepted by Dealer in fulfillment of existing orders
- Insecure** 24. If Company shall deem itself insecure it may refuse to accept orders or make shipments, unless satisfactory arrangements for payment are made.
- Notice** 25. The deposit of written notice in the mails, in an envelope certified or registered with postage prepaid and addressed to the Dealer at the address shown below, or to Company at the address shown below, shall constitute notice pursuant to this Agreement.
- Marginal Notes** 26. The marginal notes are inserted for convenience only and shall not be deemed to form part of the Agreement or to govern or affect the meaning of any of the terms thereof.
- Dealer Not An Agent** 27. Nothing in this Agreement shall be construed as constituting Dealer an employee, agent or legal representative of Company for any purpose whatsoever. Dealer has no right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of Company, or to bind Company in any manner whatsoever, except to the extent provided for in paragraph 9 hereof.
- Assignment** 28. Dealer may not sell, assign, delegate, convey or otherwise transfer in any way whatsoever this Agreement or any Dealer's rights or obligations under this Agreement without the prior written consent of Company.
- Entire Agreement** 29. This Agreement is and shall be deemed the complete and final expression of the agreement between the parties as to matters herein contained and relative thereto, and supersedes all previous agreements between the parties pertaining to such matters. It is clearly understood that no promise or representation not contained herein was an inducement to either party or was relied on by either party in entering into this Agreement.

- Alteration** 30. Except as otherwise provided for herein, this Agreement cannot be amended or altered or any of its provisions waived on behalf of Company except in writing signed by one of Company's duly authorized officers.
- Severability** 31. Any part of this Agreement which is held to be invalid or unenforceable under the laws of any place where this Agreement is to be performed or is sought to be enforced shall be enforceable to the maximum extent permitted by law, without invalidating its effect elsewhere or the remainder of this Agreement.
- Performance** 32. Any failure of Company to insist upon strict compliance with any provision of this Agreement shall not constitute a waiver thereof for the future, and all provisions herein shall remain in full force and effect.

This Agreement shall become effective as of \_\_\_\_\_, 19\_\_\_\_.

COMPANY

J. I. CASE COMPANY

By \_\_\_\_\_

(Title) \_\_\_\_\_

Date \_\_\_\_\_

DEALER

(Firm Name) ~~\_\_\_\_\_~~

By ~~\_\_\_\_\_~~

(Title) ~~\_\_\_\_\_~~

Date \_\_\_\_\_

Signatures of other partners or owners

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Company's address for notices under this Agreement.

Dealer's address for notices under this Agreement:

Street \_\_\_\_\_

Street P.O. Box #7

City \_\_\_\_\_

City CARROLLTON

State \_\_\_\_\_

State MISSOURI 64633

Zip Code

Zip Code



FROM: Ron Shouse, Shouse Implement Co., Inc., Abilene, Kansas

RE: House Bill 544

DATE: March 20, 1986

I am Ron Shouse, Mgr. Shouse Imp. Co., Abilene, Kansas. I am representing over 300 Farm Equipment Dealers of Kansas.

I would like to relate an experience that happened to me last December. One of the major lines I carried had a representative come by my business and tell me that I would no longer be their Dealer. We had not been selling many of their complete products. I might add that all new complete machines have been very slow in selling, not just theirs. We have worked up a very good parts business through the years by past sales on this line. We lost the contract because a neighboring dealer would stock more of their complete machines. He will get new terms on them and of course pick up our parts business.

If we had the Bill 544 I think we would have been able to retain the contract. The parts business we will lose at this critical time will affect the profitibility for 1986.

We need Bill 544 to protect many small dealers across Kansas from large multi-national companies with large legal departments. Right now most of the rights are squarely in manufacturers hands. The contracts we must sign each year with our suppliers are written by their legal departments with the manufacturer's interest in mind. I would like to point out that not all companies have bad contracts, and our relations with many of our suppliers are very good but some are not fair.

3-20-86 Hs. ASB  
Attachment IV

It is for the unfair contracts that many small dealers across the state need some protection from the large multi-national companies and their large legal departments. Your vote in favor of Bill 544 would help alleviate the unfairness to farm equipment dealers whose suppliers offer poor contracts.

I will be happy to answer any questions.