

Earl C. Opperthausen
General Counsel

John C. Danielson
General Attorney

Allan M. Charlton
Trial Attorney

Dennis W. Krakow
Trial Attorney

John A. Ponitz
Attorney

Mary P. Sclawy
Attorney

10823
RECORDATION NO. Filed 1425

SEP 18 1979 - 1 40 PM

INTERSTATE COMMERCE COMMISSION

S-261A050

SEP 18 1979

50.00

CC Washington, D.C.

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New No.



Grand Trunk Western Railroad Co

Law Department

131 West Lafayette Boulevard

Detroit, Michigan 48226

(313) 962-2260

August 28, 1979
File No. 352

Secretary
Interstate Commerce Commission
Washington, D.C.

Dear Madame:

Enclosed for recordation under the provisions of 49 USC §11303 are counterparts of a Conditional Sale Agreement and Assignment dated as of July 25, 1979. The railroad rolling stock covered by said agreement is 49 fully enclosed bi-level auto racks, bearing road numbers GTW 504175 to 504223, both inclusive.

The names and addresses of the parties are:

Vendor: Whitehead & Kales Company
58 Haltiner Street
Detroit, Michigan 48218

Vendee: Grand Trunk Western Railroad Company
131 West Lafayette Boulevard
Detroit, Michigan 48226

Investor: The Northern Trust Company
50 South LaSalle Street
Chicago, Illinois 60690

The undersigned is the Railroad (vendee) mentioned in the enclosed document and has knowledge of the matters set forth therein.

Please return the original Conditional Sale Agreement to Robert C. Nash, Esq., Chapman and Cutler 111 West Monroe Street, Chicago, Illinois 60603.

RECEIVED
SEP 18 1 36 PM '79
T.C.C.
FEE OPERATION BR.

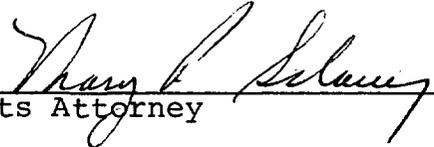
C.T. Kandler
[Signature]

Secretary
Page Two
August 28, 1979

Also enclosed is a check in the amount of \$50
covering the required recording fee.

Very truly yours,

GRAND TRUNK WESTERN RAILROAD COMPANY

BY 
Its Attorney

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

9/18/79

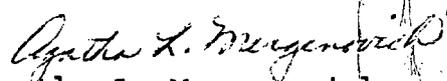
OFFICE OF THE SECRETARY

Robert C. Nash, Esq.
Chapman and Cutler
111 West Monroe Street
Chicago, Illinois 60603

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/18/79 at 1:40pm, and assigned recordation number(s). 10823

Sincerely yours,


Agatha L. Mergenovich
Secretary

Enclosure(s)

CONDITIONAL SALE AGREEMENT
AND ASSIGNMENT

10823
RECORDATION NO. Filed 1425

Dated as of July 25, 1979

SEP 18 1979 - 1 40 PM
INTERSTATE COMMERCE COMMISSION

Among

WHITEHEAD & KALES COMPANY

Vendor

GRAND TRUNK WESTERN RAILROAD COMPANY

Railroad

and

THE NORTHERN TRUST COMPANY

Investor

Re:

\$1,670,900 Maximum Principal Amount

Conditional Sale Indebtedness due 1980 - 1984
of
Grand Trunk Western Railroad Company

(49 Fully-enclosed Bi-level Automobile Racks)
(GTW 79-1)

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Attachments to Conditional Sale Agreement and Assignment

Schedule A - Description of Equipment

CONDITIONAL SALE AGREEMENT AND ASSIGNMENT dated as of July 25, 1979 between WHITEHEAD & KALES COMPANY, a Michigan corporation (the "Vendor"), GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (the "Railroad") and THE NORTHERN TRUST COMPANY, an Illinois banking corporation (the "Investor").

WHEREAS, the Vendor is willing to construct, sell and deliver to the Railroad, and the Railroad is willing to purchase, the railroad equipment described in Schedule A attached hereto (collectively the "Items of Equipment" or "Equipment" and individually an "Item" or "Item of Equipment");

WHEREAS, the Railroad and the Investor have entered into a Finance Agreement dated as of July 25, 1979 (the "Finance Agreement") providing for the financing of the cost of the Equipment;

WHEREAS, the Investor, the Vendor and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Vendor and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment; and

WHEREAS, the Investor is willing to acquire the right, security title and interest of the Vendor in and to the within Conditional Sale Agreement and Assignment and the right, security title and interest in and to the Equipment covered thereby for a consideration equal to the Conditional Sale Indebtedness hereunder and upon and subject to the terms and conditions hereinafter and in the Finance Agreement set forth.

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

SECTION 1. CONSTRUCTION AND SALE.

The Vendor will construct, sell and deliver to the Railroad, and the Railroad will purchase from the Vendor and accept delivery of and pay for as hereinafter provided, the Equipment, each Item of which shall be constructed in accordance with the applicable specifications referred to in Schedule A hereto, with such modifications thereof as may be agreed upon in writing by the Railroad and the Vendor (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design and quality of equipment and material in such Items shall conform to all Department of Transportation requirements and specifications for new equipment, and to all standards of the Association of American Railroads, if any, interpreted as being applicable to new railroad equipment of the character of such Items as of the date of this Agreement.

SECTION 2. DELIVERY.

2.1. The Vendor will deliver the various Items of Equipment to be manufactured by it to the Railroad in accordance with the applicable delivery schedule set forth in Schedule A attached hereto; provided, however, that the Vendor shall have no obligation to deliver any Item of Equipment hereunder so long as any Event of Default pursuant to Section 15.1 hereof shall have occurred and be continuing. The Vendor agrees not to deliver and the Railroad shall have no obligation to accept any Items of Equipment following notice to the Vendor from the Railroad or any assignee of the Vendor that any Event of Default pursuant to Section 15.1 hereof has occurred and is continuing.

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

2.3. Notwithstanding the foregoing provisions of this Section 2, any Equipment not delivered and accepted on or before the outside delivery date provided therefor in Schedule A attached hereto shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Vendor shall remain obligated to construct, sell and deliver to the Railroad, and the Railroad shall remain obligated to purchase from the Vendor, accept delivery of and pay for, any of the Equipment thus excluded from this Agreement, and the Investor, the Railroad and the Vendor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not excluded herefrom, and the Vendor and the Railroad shall further execute a separate agreement providing for the sale of such excluded Equipment by the Vendor to the Railroad upon the same terms and conditions as those contained herein, modified only to the extent necessary to provide for payment in cash upon delivery of the Equipment, either directly or indirectly by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad may determine and as may be reasonably satisfactory to the Vendor.

2.4. The Equipment during construction shall be subject to inspection by one or more inspectors or other authorized representatives of the Railroad. Upon completion of each Item of Equipment by the Vendor, it shall be presented to such inspectors or representatives for inspection at the place designated herein for delivery of such Item of Equipment, and, if such Item of Equipment conforms to the Specifications applicable thereto, such inspectors or representatives shall execute and deliver to the Vendor a certificate or certificates of acceptance (hereinafter called the "Certificate of Acceptance") stating that such Item of Equipment has been

been inspected and is accepted by them on behalf of the Railroad and is marked in accordance with Section 5.1 hereof. Any Certificate of Acceptance may cover any number of Items of Equipment.

2.5. The Vendor shall bear the risk of loss of each Item of Equipment or damage thereto until delivery to and acceptance of such Item by the Railroad. Upon delivery and acceptance by the Railroad of each of such Items of Equipment, the Railroad shall bear the risk of loss of or damage to such Items.

SECTION 3. PURCHASE PRICE AND PAYMENT.

3.1. The base price per Item of Equipment including freight charges, if any, to place of delivery, but exclusive of interest, insurance and all other charges, is as set forth in Schedule A attached hereto. Such base price per Item of Equipment shall be subject to increase or decrease as may be agreed to in writing by the Vendor thereof and the Railroad, and the term "Purchase Price" as used herein shall mean such base price as so increased or decreased, provided, however, that the aggregate Purchase Price of all Items shall not exceed \$1,670,900.

3.2. For the purpose of making settlement for the Equipment, all Items of Equipment shall constitute one group (the "Group").

3.3. The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor at such bank or trust company in the United States of America as the Vendor shall designate for payment to it, an amount for each Item of Equipment in the Group equal to 100% of the Purchase Price, as stated in the Vendor's invoice or invoices presented in respect of such Item of Equipment (herein sometimes called the "Conditional Sale Indebtedness") plus interest on the unpaid balance thereof at the rate per annum provided in Section 3.7 hereof, payable in ten (10) semiannual installments, each in the amount of 10% of the Conditional Sale Indebtedness, plus accrued interest at the rate per annum provided in Section 3.7 hereof, payable on April 1, 1980 and on the first day of each October and April thereafter to and including October 1, 1984.

3.4. The term "Closing Date" with respect to the Group shall mean such business day, not later than September 28, 1979, which is not more than ten business days following presentation by the Vendor to the Railroad of the invoice, or invoices, and the Certificate or Certificates of Acceptance with respect to such Group, as shall be fixed by the Railroad by written or telegraphic notice delivered to the Vendor and any assignee of the Vendor at least five business days prior to the Closing Date designated therein, or such other date as shall be agreed upon by the Vendor, the Investor, and the Railroad.

3.5. The term "business day" as used herein means a calendar day during which the main office of the Investor in

Chicago, Illinois is open for business, provided that the term "business day" as used in Section 3.7(a)(4) hereof shall mean a calendar day during which both said main office of the Investor and the offices of banking houses in London, England are open for business.

3.6. Anything herein to the contrary notwithstanding, the Railroad will pay interest upon all unpaid balances of indebtedness and (to the extent legally enforceable) upon interest, after the same shall have become due and payable pursuant to the terms hereof, at a rate per annum determined by adding 1% to the rate in effect immediately prior to such indebtedness having become due.

3.7. (a) For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

(1) The term "Interest Periods" shall mean the periods from the Closing Date to December 31, 1979, both inclusive, and each of the quarterly periods commencing January 1, 1980 and on the first day of each April, July, October and January thereafter;

(2) The term "Prime Rate" of interest applicable to any Interest Period shall mean that per annum rate of interest announced by the Investor to be in effect on the sixth business day preceding the first day of such Interest Period as its prime commercial lending rate for 90 day unsecured domestic loans;

(3) The term "Prime-Based Rate" shall mean: (i) with respect to any Interest Period commencing prior to October 1, 1981, a rate per annum equal to the Prime Rate and (ii) with respect to any Interest Period commencing on and after October 1, 1981, a rate per annum equal to 103% of the Prime Rate;

(4) The term "LIBOR Rate" applicable to any Interest Period shall mean that rate of interest as finally determined by the Investor to be that rate of interest at which the London, England branch of the Investor offers deposits of United States dollars in an amount not less than the outstanding Conditional Sale Indebtedness for a period of one calendar quarter in the London, England interbank market as of 10:00 A.M., New York standard time, on the sixth business day preceding the first day of such Interest Period;

(5) The term "LIBOR-Based Rate" shall mean any amounts required to be paid pursuant to Section 3.7 (d) hereof, plus: (i) with respect to any Interest Period commencing prior to October 1, 1981 a rate per annum determined by adding one-half of 1% to

the LIBOR Rate, and (ii) with respect to Interest Periods commencing on and after October 1, 1981 a rate per annum determined by adding three-quarters of 1% to the LIBOR Rate; and

(6) The term "Automatic Rate" for any Interest Period shall mean the LIBOR-Based Rate or Prime-Based Rate, whichever is higher during such Interest Period.

(b) The Conditional Sale Indebtedness shall bear interest for and during each Interest Period prior to maturity at the Automatic Rate, unless the Railroad shall have notified the Investor in writing at least five business days prior to the commencement of such Interest Period of its election to have the Conditional Sale Indebtedness bear interest at the Prime-Based Rate or, subject to the provisions of Sections 3.7(c) and (d) hereof, the LIBOR-Based Rate, in which event the Conditional Sale Indebtedness shall bear interest during such Interest Period at the rate specified in such notice.

(c) In the event that:

(i) the Investor reasonably determines that deposits of U. S. Dollars of the required amount are not available to it in the London interbank market, or

(ii) any applicable statute, treaty, or regulation of any appropriate jurisdiction shall make it unlawful for the Investor to make or continue to maintain loans hereunder based on a LIBOR-Based Rate or to make borrowings in the London interbank market to fund such loans, or

(iii) if any central bank or other fiscal authority having jurisdiction over the Investor or such loans shall require the Investor to comply with restrictions (whether or not having the force of law) which seek to prohibit the Investor from making or continuing to maintain such loans hereunder,

then the Conditional Sale Indebtedness shall bear interest for and during each subsequent Interest Period at the Prime-Based Rate until after such objections or conditions are changed or removed.

(d) In the event that any new or existing statute, treaty, or regulation shall:

(i) impose, modify or deem applicable any reserve and/or special deposit requirement against assets held by or deposits in or for the account of any loans by the Investor bearing interest at a rate based upon the LIBOR Rate; or

(ii) subject the Investor to any tax (including without limitation any United States interest equalization or similar tax, however named), duty, charge, fee, deduction or withholding with respect to such loans or this Agreement; or

(iii) change the basis of taxation of payments due from the Railroad with respect to such loans hereunder (otherwise than by a change in taxation of the overall net income of the Investor); or

(iv) impose on the Investor any premium or penalty with respect to any of the foregoing or any other monetary condition with respect to this Agreement or said loans,

the Investor shall give the Railroad notice of such event, and thereafter the Railroad may continue to elect to have the Conditional Sale Indebtedness bear interest at the LIBOR-Based Rate only if it pays the additional cost to the Investor, as reasonably determined by the Investor, and if such loans and their maintenance continue to be lawful.

(e) Interest under this Agreement shall be determined on the basis of a year of 365 or 366 days, as the case may be.

3.8. All payments provided for in this Agreement shall be made by the Railroad in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. All payments of installments of the Conditional Sale Indebtedness and/or interest thereon and all payments due pursuant to Section 6 hereof shall be made prior to 11:00 A.M. Chicago time by wire transfer of Federal funds to such bank in the United States for the account of the Vendor or its assignee as the Vendor or its assignee shall from time to time direct the Railroad in writing. If any payment provided for in this Agreement falls due on any day which is not a business day, such payment shall be due and payable on the most recent preceding day which is a business day.

3.9. (a) In addition to the prepayments provided for in Section 6 hereof, upon notice as provided in Section 3.9(c) hereof, the Railroad shall have the privilege, but subject to the limitations expressed in Section 3.9(b) hereof, of prepaying the Conditional Sale Indebtedness, either in whole or in part (but if in part then in units of \$100,000 or an integral multiple of \$10,000 in excess thereof) by payment of the principal amount of the Conditional Sale Indebtedness or portion thereof to be prepaid and accrued interest thereon to the date of such prepayment.

(b) The Conditional Sale Indebtedness may be prepaid as follows:

(1) With respect to any Interest Period during which the Conditional Sale Indebtedness bears interest at the Prime-Based Rate, the Conditional Sale Indebtedness may be prepaid at any time; and

(2) With respect to any Interest Period during which the Conditional Sale Indebtedness bears interest at the LIBOR-Based Rate, the Conditional Sale Indebtedness may be prepaid only upon an installment maturity date referred to in Section 3.3 hereof.

(c) The Railroad will give the Vendor notice in writing of any prepayment of the Conditional Sale Indebtedness not less than 5 business days prior to the date for such prepayment, specifying (i) such date, (ii) the principal amount of the Conditional Sale Indebtedness to be prepaid on such date, and (iii) the accrued interest applicable to the prepayment. Notice of prepayment having been so given, the aggregate principal amount of the Conditional Sale Indebtedness specified in such notice and accrued interest thereon shall become due and payable on the prepayment date.

SECTION 4. TITLE TO THE EQUIPMENT.

4.1. The Vendor shall and hereby does retain the full security title to and property in the Equipment built by it until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment (not including, however, any parts installed on and additions to any Item of Equipment, any portion of whose cost is furnished by the Railroad and which are readily removable without causing material damage to such Item of Equipment, but including parts installed on and replacements made to any Item of Equipment which constitute ordinary maintenance and repairs made by the Railroad pursuant to Section 9 hereof) and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

4.2. When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment built by it, together with interest and all other payments as herein provided and all the Railroad's other obligations herein contained shall have been performed, absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by

the Railroad so to do, will execute a bill or bills of sale of such Equipment releasing its security title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address specified in Section 20 hereof, and will execute in the same manner and deliver at the same place, for filing, registering, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to such Equipment, and will pay to the Railroad any money paid to the Vendor, pursuant to Section 6.1 hereof and not theretofore applied as provided in Section 6.2 hereof. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bills or bills of sale or to file such certificate within a reasonable time after written demand by the Railroad.

SECTION 5. MARKING OF EQUIPMENT.

5.1. The Railroad will at its own expense cause each Item of Equipment to be kept numbered with its rack number as set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked by a plate or stencil printed in contrasting color upon both sides of each Item of Equipment in letters not less than one inch in height, the words "Title to This Rack is Subject to Documents Recorded with the Interstate Commerce Commission", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security title of the Vendor to such Item of Equipment, its rights under this Agreement and the rights of any assignee under Section 14 hereof. The Railroad will not place any such Item of Equipment in operation or exercise any control or dominion over the same until the required legend shall have been so marked on both sides thereof and will replace promptly any such names and word or words which may be removed, defaced or destroyed. The Railroad will not change the rack number of any Item of Equipment except with the consent of the Vendor or any assignee pursuant to Section 14 hereof and in accordance with a statement of new rack numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

5.2. Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Railroad or its affiliates

on railroad equipment used by it of the same or a similar type for convenience of identification of the right of the Railroad to use the Equipment under this Agreement.

SECTION 6. CASUALTY OCCURRENCES.

6.1. In the event that any Item of Equipment shall be or become lost, stolen, destroyed, or irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (each such occurrence, except for any requisition which by its terms is indefinite or does not exceed the original term of this Agreement, being hereinafter called a "Casualty Occurrence"), prior to the payment of the indebtedness in respect of the purchase price of such Item, together with interest thereon and all other payments required hereby, the Railroad shall, within fifteen days after it shall have been determined that such Item of Equipment has suffered a Casualty Occurrence, fully inform the Vendor in regard thereto. The Railroad shall, on the semiannual payment date next succeeding the date of such determination, pay to the Vendor a sum equal to the Casualty Payment (as defined in Section 6.3 hereof) of such Item of Equipment as of the date of such payment and shall file with the Vendor a certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad setting forth the Casualty Payment of the Item of Equipment suffering a Casualty Occurrence.

6.2. Any money paid to the Vendor pursuant to Section 6.1 hereof shall, so long as no Event of Default shall have occurred and be continuing, be applied, in whole or in part, as the Railroad shall direct in a written instrument filed with the Vendor, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of an Item or Items of Equipment of new railroad equipment which shall be of the same character as the Equipment described in Schedule A hereto to replace such Item of Equipment having suffered a Casualty Occurrence and which new Item or Items of Equipment shall be of a quality and have a value and utility at least equal to such Item of Equipment having suffered a Casualty Occurrence, as the Railroad shall direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied, on the first date set for the payment of an installment (consisting of either principal or interest on) of the Conditional Sale Indebtedness next following receipt by the Vendor of such written direction, to prepay installments of the Conditional Sale Indebtedness thereafter falling due in the inverse order of their maturities, but without premium, and whether or not such amount shall be sufficient to prepay one or more entire installments (or portions thereof) of the Conditional Sale Indebtedness. In case of replacement the amount to be paid by the Vendor in respect of any replacing Item shall not exceed the lesser of the cost of such Item or the amount which such Item would have cost if acquired on the earliest date when any of such money was paid to the Vendor, and the Railroad shall pay any additional cost

of such Item. The amount which any such replacing Item would have cost if acquired on the earliest date when any of such money was paid to the Vendor shall be conclusively determined by the certificate of a Vice President or the Comptroller or other Chief Accounting Officer of the Railroad to be filed as hereinafter provided.

6.3. The payment to be made to the Vendor in respect of each Item of Equipment having suffered a Casualty Occurrence (the "Casualty Payment") shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Payment shall be made, plus interest accrued thereon but unpaid as of such date.

6.4. Any money paid to the Vendor pursuant to this Section 6, if the Railroad shall have directed pursuant to Section 6.2 that such money be applied toward the cost of a new Item of Equipment, shall be deposited by the Vendor with a bank or trust company satisfactory to the Vendor and under an agreement (the "Escrow Agreement") satisfactory to the Vendor. Under the Escrow Agreement, such bank or trust company (the "Escrow Agent") will agree to hold such money for the benefit of the Vendor, pending its application as provided in Sections 6.2, 6.5, and 6.6, and will agree to be bound by provisions substantially similar to this Section 6.4. So long as no Event of Default shall have occurred and be continuing, any money so held by the Escrow Agent shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in (i) such direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest or (ii) open market commercial paper given the highest rating by a national credit agency or (iii) in certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least \$50,000,000, in each case maturing in not more than one year from the date of such investment (all such investments being hereinafter called "Investments"), as may be specified in such written direction. Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest or earned discount received by the Escrow Agent on any Investments shall be held by the Escrow Agent and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Escrow Agent thereon, up to the cost (including accrued interest or earned discount) thereof, shall be held by the Escrow Agent for application pursuant to this Section 6, and any excess shall be paid to the Railroad. If such proceeds (plus such interest or earned discount) shall be less than such cost, the Railroad will promptly pay to the Escrow Agent an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Escrow Agent in connection with its functioning as Escrow Agent and with the purchase and sale of Investments.

6.5. The Railroad will cause any replacing Item to be plated or marked as provided in Section 5.1 hereof. Any and all

such replacement of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall promptly execute, acknowledge, deliver, file and record all such documents (including the filing with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303 and the deposit with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and publication of such deposit in The Canada Gazette in accordance with said Section 86 of an appropriate supplemental agreement describing such replacements) and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements. All such replacements shall be warranted in like manner as the Items replaced, and the vendor of the replacements shall, if other than the Vendor, duly consent to the subjection thereof to this Agreement and agree to be bound by all the terms and provisions contained herein in respect of such replacements in like manner as the Vendor is in respect of the original Equipment delivered hereunder.

6.6. Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Section 6, a written direction to apply money to or toward the cost of a replacing Item of new railroad equipment, the Railroad shall file therewith in such number of counterparts as may reasonably be requested:

(a) a certificate of a Vice President or a Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing Item is new equipment and has been plated or marked as required by the provisions of this Section 6 and certifying the cost of such replacing unit, the amount which such replacing Item would have cost if acquired on the earliest date when any such money was paid to the Vendor and that the cost thereof does not exceed the fair value of such Item and that such replacing Item is of a quality and has a value and utility at least equal to the Item replaced; and

(b) an opinion of counsel for the Railroad that security title to such replacing Item is validly vested in the Vendor free and clear of all claims, liens and encumbrances (other than the lien of this Agreement), and that such Item has come under and become subject to this Agreement, and that no other filing or recordation is necessary for the protection of the rights of the Vendor in the United States of America and Canada.

6.7. If an Event of Default shall have occurred and be continuing, then so long as such Event of Default shall continue all money then held by the Vendor pursuant to this Section 6 shall

be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Section 16 hereof.

6.8. In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after deposit by the Railroad of a sum equal to the Casualty Payment of such Equipment, execute and deliver to the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Conditional Sale Agreement, in such form as may be reasonably requested by the Railroad.

6.9. In the event that prior to the expiration of the term of this Agreement, the use of any Item of Equipment is requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for an indefinite period or for a stated period ending on or before said date, the Railroad's duty to pay the indebtedness in respect of the purchase price thereof shall continue for the duration of such requisitioning or taking. The Railroad shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession.

SECTION 7. TAXES.

All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor in respect of the amount of any local, state or federal taxes, license and registration fees, assessments, charges, fines, penalties, sales, use and property taxes, gross receipts taxes arising out of receipts from use or operation of the Equipment, and other taxes, fees and governmental charges similar or dissimilar to the foregoing (other than net income, excess profits and similar taxes) hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the purchase price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any Item of Equipment; provided, however, that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the

opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of invoice therefor; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Vendor shall have been legally liable with respect thereto as evidenced by an opinion of counsel for the Vendor or unless the Railroad shall have approved the payment thereof.

SECTION 8. REPORTS AND INSPECTIONS.

8.1. On or before May 1 in each year, commencing with the year 1980, the Railroad will furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Items of Equipment then subject to this Agreement, the amount, description and numbers of all Items of Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Agreement, in the case of the first such statement), and such other information regarding the condition or repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Section 5.1 hereof shall have been preserved or replaced.

8.2. The Vendor shall have the right, at its sole cost and expense by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Vendor the existence and proper maintenance thereof during the continuance of this Agreement.

SECTION 9. POSSESSION, USE AND MAINTENANCE.

9.1. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Vendor to the Railroad, to the possession of the Equipment and the use thereof by it and any affiliate of the Railroad upon the lines of railroad owned or operated by any such affiliate or by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any company controlled by or controlling the Railroad, or over which it or any such affiliate has trackage rights, or run through or operating agreements, including the possession and use of the Equipment upon connecting and other carriers in the usual interchange of traffic (without notice to the Vendor), provided, however, that the Railroad shall not assign or permit the assignment of any Item of Equipment to service involving the regular operation

and maintenance thereof outside the continental United States and Canada. The Railroad may lease the Equipment to an affiliate (or to another party upon the consent of the Vendor, such consent not to be unreasonably withheld) but only upon and subject to all the terms and conditions of this Agreement and provided that no such lease shall relieve the Railroad of any liability or obligations hereunder which shall be those of a principal and not a surety.

9.2. The Railroad shall use the Equipment only in the manner for which it was designed and intended and so as to subject it only to ordinary wear and tear. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted. The Railroad shall not modify any Item of Equipment without the written authority and approval of the Vendor which shall not be unreasonably withheld, provided that no such approval shall be required if and to the extent such modification is required by Section 11 hereof. Except as provided in Section 4.1 hereof, any parts installed or replacements made by the Railroad upon any Item of Equipment shall be considered accessions to such Item of Equipment and title thereto shall be immediately vested in the Vendor, without cost or expense to the Vendor.

SECTION 10. PROHIBITION AGAINST LIENS.

10.1. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any Item of Equipment equal or superior to the security title of the Vendor, and any liens, encumbrances or charges which might be levied against or imposed upon any Item of Equipment as a result of the failure of the Railroad to perform or observe any of its covenants or agreements under this Agreement, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested by the Railroad in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

10.2. Without limiting the foregoing, the Railroad further agrees that it will keep each Item of Equipment free and clear of any liens, charges, encumbrances or claims of the owner or owners of any interest in any units of railroad rolling stock to which any such Item of Equipment is at any time attached or affixed and of any purchasers of or present or future creditors obtaining a lien on such unit or units of rolling stock, and the Railroad will permit an Item of Equipment to be attached or affixed to a unit of rolling stock only in a manner so as to permit such Item to be readily removable from such unit of rolling stock without material damage to such Item or to such unit of rolling stock and without diminishing or impairing the value or utility such Item or

the value or utility such unit of rolling stock would have had at such time had such Item not been so attached or affixed.

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

SECTION 11. RULES, LAWS AND REGULATIONS.

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

SECTION 12. INDEMNITIES.

12.1. The Railroad agrees to indemnify, protect and hold harmless the Vendor against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including claims for strict liability in tort and counsel fees, arising out of retention by the Vendor of security title to the Equipment, or out of the use and operation thereof during the period when security title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment and the conveyance of the Equipment as provided in Section 4.2 hereof, or the termination of this Agreement in any manner whatsoever.

12.2. As between the Vendor and the Railroad, the Railroad, after delivery to and acceptance by it pursuant to Section 2.4 hereof, will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Item or of all the Equipment.

12.3. The Vendor warrants that the Items of Equipment will be built in accordance with the Specifications and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by the Vendor) and workmanship under normal use and service, the Vendor's obligation under this Section being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to Vendor with transportation charges prepaid and which Vendor's examination shall disclose to its satisfaction to have been thus defective. Vendor shall not be liable for any indirect, incidental, consequential, commercial or special damages of whatever nature.

THE FOREGOING WARRANTY OF THE VENDOR IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE, AND VENDOR NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT EXCEPT FOR THE PATENT INDEMNIFICATION INCLUDED IN SECTION 13 OF THIS AGREEMENT.

Vendor further agrees with the Railroad that neither the inspection as provided in Section 2 of this Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Section 2 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Section 12.3.

SECTION 13. PATENT INDEMNITIES.

13.1. Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Vendor, and articles and materials specified by the Railroad and not manufactured by the Vendor, the Vendor agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad because of the use in or about the construction of any Item of Equipment to be built by it, of any design, article or material which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Vendor because of the use in or about the construction or operation of any Item of Equipment thereof, of any design specified by the Railroad and not developed or purported to be developed by the Vendor, or article or material specified by the Railroad and not manufactured by the Vendor, which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. In case

any Item of Equipment is held to constitute infringement of any patent or other similar right in respect of which liability may be charged against the Vendor, and the use of any Item of Equipment is enjoined, the Vendor shall, at its own expense and at its option, either procure for the Railroad the right to continue using such Item of Equipment or replace the same with non-infringing equipment, or modify it so it becomes non-infringing. Without intending any limitation of the foregoing, the Vendor agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Vendor has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Vendor for use in or about the construction or operation of the Items of Equipment to be built by it on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on or to constitute contributory infringement with respect to any patent or other right and the Vendor further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Vendor will give notice to the Railroad of any claim known to the Vendor from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Vendor of any claim known to it from which liability may be charged against the Vendor hereunder.

13.2. The term "design" wherever used in this Agreement or in any assignment of this Agreement shall be deemed to include formulae, systems, processes and combinations.

SECTION 14. PURCHASE OF VENDOR'S RIGHT, SECURITY TITLE AND INTEREST BY INVESTOR

14.1. Concurrently with the execution and delivery of this Conditional Sale Agreement and Assignment and pursuant to the Finance Agreement, the Investor is acquiring from the Vendor its right, security title and interest under this Conditional Sale Agreement and Assignment. Accordingly, the Vendor hereby assigns, transfers and sets over unto the Investor, its successors and assigns:

(a) All the right, security title and interest of the Vendor in and to each Item of Equipment upon payment by the Investor of the Conditional Sale Indebtedness as provided in Section 2 of the Finance Agreement;

(b) All the right, title and interest of the Vendor in and to this Conditional Sale Agreement and Assignment (except the right to receive the payments specified in Section 14.5 hereof), and in and to any and all amounts which may be or become due or owing to the Vendor under this Conditional Sale Agreement and

Assignment on account of the indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under this Conditional Sale Agreement and Assignment, other than those hereinabove excluded; and

(c) Except as limited above in subparagraph (b) hereof, all of the Vendor's rights, powers, privileges and remedies under this Conditional Sale Agreement and Assignment;

without any recourse, however, against the Vendor for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of this Conditional Sale Agreement and Assignment; provided, however, that this assignment shall not subject the Investor to, or transfer, or pass, or in any way affect or modify the obligations of the Vendor to sell the various Items of Equipment in accordance with this Conditional Sale Agreement and Assignment or the Vendor's obligations under Sections 12.3, 13, and 14.2 hereof or relieve the Railroad from its obligations to the Vendor under Sections 2 and 14.5 of this Conditional Sale Agreement and Assignment, it being understood and agreed that notwithstanding this assignment or any subsequent assignment pursuant to the provisions of Section 14.4 of this Conditional Sale Agreement and Assignment, all obligations of the Vendor, if any, to the Railroad shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Vendor. In furtherance of the foregoing assignment and transfer, the Vendor hereby authorizes and empowers the Investor in the Investor's name, or in the name of the Investor's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Vendor to ask, demand, sue for, collect, receive and enforce any and all sums to which the Investor is or may become entitled under this Conditional Sale Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under this Conditional Sale Agreement and Assignment, but at the expense and liability and for the sole benefit of the Investor.

14.2. The Vendor covenants and agrees that it will warrant to the Investor and the Railroad that on the Closing Date under this Conditional Sale Agreement and Assignment it had legal title to each Item of Equipment and good and lawful right to sell such Item and the title to such Item was free of all claims, liens and encumbrances of any nature except only the right of the Vendor to receive payment of its Purchase Price therefor and the rights of the Railroad under this Conditional Sale Agreement and Assignment; and the Vendor further covenants and agrees that it will defend the title to such Item against the demands of all persons whomsoever based on claims originating prior to the Closing Date; all subject, however, to the provisions of this Conditional Sale Agreement and Assignment and the rights of the Railroad hereunder.

The Vendor covenants and agrees with the Investor that in any suit, proceeding or action brought by the Investor under this

Conditional Sale Agreement and Assignment for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of this Conditional Sale Agreement and Assignment, the Vendor will indemnify, protect and hold harmless the Investor from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Vendor of any obligation with respect to the Equipment or the sale thereof by the Vendor, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Vendor. The Vendor's obligation so to indemnify, protect and hold harmless the Investor is conditional upon (a) the Investor's timely motion or other appropriate action to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Investor's prompt notification to the Vendor of the asserted defense, set-off, counterclaim or recoupment and the Investor's giving the Vendor the right, at the Vendor's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Vendor and shall not be enforceable against the Investor or any party or parties in whom security title to the Equipment or any Item thereof or any of the rights of the Vendor under this Conditional Sale Agreement and Assignment shall vest by reason of this assignment or of successive assignments. The Investor will give notice to the Vendor of any suit, proceeding or action by or against the Investor herein described.

The Vendor agrees that any amount payable to it by the Railroad, whether pursuant to this Conditional Sale Agreement and Assignment or otherwise, not hereby assigned to the Investor, shall not be secured by any lien or charge on any Item of Equipment.

14.3. The Railroad hereby acknowledges that concurrently with the execution and delivery of this Conditional Sale Agreement and Assignment and the delivery to, and acceptance by, the Railroad of the Equipment, the Vendor is hereby assigning all of its right, security title and interest in and to each Item of Equipment and this Conditional Sale Agreement and Assignment all as more fully provided in Section 14.1 hereof. The Railroad expressly acknowledges and agrees with the Investor and its successors and assigns, for the purpose of inducing the execution and delivery of this Conditional Sale Agreement and Assignment and the Finance Agreement by the Investor and its advance to the Vendor in consideration of the Vendor's assignment hereof of Conditional Sale Indebtedness payable in respect of the Equipment, that the rights of the Investor and its successors and assigns to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or any part thereof

as so assigned, together with interest thereon, as well as all other rights hereunder so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever, whether by reason of the nonreceipt by the Railroad of any Item or Items of Equipment or any breach of any obligation of the Vendor with respect to the Equipment or the delivery or warranty thereof or with respect to any indemnity herein contained or any interruption from whatsoever cause in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof whether before or after the Closing Date, or by reason of any other indebtedness or liability, howsoever and when arising, at any time owing to the Railroad by the Vendor or to any other person, firm or corporation or to any governmental authority, or for any cause whatsoever, it being the intent hereof that the Railroad shall be unconditionally and absolutely obligated to pay the Investor the entire unpaid indebtedness in respect of the Purchase Price of the Equipment as so assigned, together with interest thereon, all in the manner and upon the dates set forth in Section 3.3 hereof and as otherwise provided thereon.

14.4. In the event of any successive assignment by the Investor of security title to the Equipment and of the Investor's rights hereunder with respect thereto, the Railroad will, whenever reasonably requested by such assignee, change the names and word or words to be marked on each side of each Item of Equipment so as to indicate the security title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to any successor assignee shall be borne by the Railroad.

14.5. If the Investor shall not make payment on the Closing Date with respect to the Group of the Purchase Price of such Items of Equipment included in the Group as provided in the Finance Agreement, the Vendor will promptly notify the Railroad of such event, such Items of Equipment included in the Group shall then be excluded and the Railroad shall not later than 60 days after the Closing Date pay or cause to be paid the Purchase Price (together with interest thereon at the rate per annum announced by Manufacturers National Bank, Detroit, Michigan as its prime commercial lending rate for 90 day unsecured loans (with any change in such interest rate resulting from a change in such prime rate to be and become effective as of and on the day following the relevant change in such prime rate)) of all such Items of Equipment, or the portion thereof unpaid by the Investor, as provided in Section 3.1 hereof, such payment to be in cash or if the Vendor and the Railroad shall mutually agree, by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad shall determine and as may be reasonably satisfactory to the Vendor.

SECTION 15. DEFAULTS.

15.1. In the event that any one or more of the following events of default ("Events of Default") shall occur and be continuing, to-wit:

(a) The Railroad shall fail to pay in full any sum payable by the Railroad when payment thereof shall be due under Section 3 or 6 hereof and such default shall continue for five days; or

(b) The Railroad shall fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance for more than 30 days after written notice from the Vendor specifying the default and demanding the same to be remedied; or

(c) Any representation or warranty made by the Railroad herein or in any statement or certificate furnished to the Vendor or any assignee of the Vendor pursuant to or in connection with this Agreement, or the Finance Agreement proves untrue in any material respect as of the date of issuance or making thereof; or

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

(e) Any other proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and (unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective but then only so long as such stay shall continue in force or such ineffectiveness shall continue) all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for the property of the Railroad in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appoint-

ment or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence and during the continuance of such an Event of Default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such declaration at a rate of interest per annum determined by adding 1% to the rate in effect immediately prior to such declaration, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

15.2. The Vendor may waive any such Event of Default and its consequence and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

SECTION 16. REMEDIES.

16.1. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor shall have the rights, options, duties and remedies of a secured party, and the Railroad shall have the rights and duties of a debtor, under the Uniform Commercial Code of Illinois (regardless of whether such Code or a law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted) and without limiting the foregoing, the Vendor may exercise any one or more or all, and in any order, of the remedies hereinafter set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies; but each

and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute. The Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any Item thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the premises of the Railroad or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

16.2. In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad, for a period not exceeding 180 days, until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor and reasonably convenient to the Railroad. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Item of Equipment in any reasonable manner.

16.3. If an Event of Default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Section 15.2 hereof), (a) the Vendor (after retaking possession of the Equipment as hereinbefore in this Section 16 provided) may at its election retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit, and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Vendor as com-

pensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad: (i) shall object in writing within 30 days of receipt of notice, as hereinafter provided, of the Vendor's election to retain the Equipment for its own use, the Vendor shall sell, lease or otherwise dispose of the Equipment as hereinafter provided, or (ii) shall, within 60 days of receipt of such notice, pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or (b) the Vendor, with or without the retaking of possession thereof, may, at its election, sell, lease or otherwise dispose of the Equipment, or any Item thereof, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad, at law or in equity, by public or private proceedings and with or without advertisement as the Vendor may determine; and the proceeds of such disposition, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing, preparing and disposing of the Equipment, shall be credited to the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Section 20 hereof, at any time during a period of 60 days after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, the Vendor shall be deemed to have elected to sell, lease or otherwise dispose of the Equipment in accordance with the provisions of this Section 16.

16.4. Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, provided that the Railroad shall be given written notice of such sale not less than 60 days prior thereto, by mail addressed as provided herein. If such sale shall be a private sale, it shall be subject to the rights of the Railroad to purchase or provide a purchaser, within 60 days after notice of the proposed sale price, at the same price offered in writing by the intending purchaser or a better price. In the event that the Railroad does not exercise said right to purchase or provide a purchaser for the Equipment, the Vendor may bid for and become the purchaser of the Equipment, or any Item thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section), and in payment of the Purchase Price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

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

16.6. All sums of money realized by the Vendor under the remedies herein provided shall be applied, first to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, second to the payment of the indebtedness in respect of the Purchase Price of the Equipment and third to the payment of interest on the indebtedness in respect of the Purchase Price of the Equipment accrued and unpaid. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

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

SECTION 17. APPLICABLE STATE LAWS.

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

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

SECTION 18. EXTENSION NOT A WAIVER.

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

SECTION 19. RECORDING.

The Railroad will cause this Agreement, any assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and re-filed, re-recorded or re-deposited, if necessary, with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of such filing, recording or depositing, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

SECTION 20. NOTICE.

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad: Grand Trunk Western Railroad Company, 131 West Lafayette Boulevard, Detroit, Michigan 48226, Attention: Secretary;

(b) to the Vendor: Whitehead & Kales Company, 58 Haltiner Street, River Rouge, Michigan 48218;

(c) to the Investor: The Northern Trust Company,
50 South LaSalle Street, Chicago, Illinois 60675,
Attention: Loan Operating Division - Bank-2;

(d) to any assignee of the Vendor, or of the
Investor, or of the Railroad, at such address as may
have been furnished in writing to the Railroad or the
Vendor, or the Investor, as the case may be, by such
assignee,

or at such other address as may have been furnished in writing by
such party to the other parties to this Agreement.

SECTION 21. HEADINGS

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

SECTION 22. EFFECT AND MODIFICATION OF AGREEMENTS.

This Agreement and the Schedule relating hereto ex-
clusively and completely state the rights and agreements of the
Investor, the Vendor and the Railroad with respect to the Equipment
and supersede all other agreements, oral or written, with respect
to the Equipment. No variation of this Agreement and no waiver of
any of its provisions or conditions shall be valid unless in writing
and duly executed on behalf of the Investor, the Vendor and the
Railroad.

SECTION 23. LAW GOVERNING.

The terms of this Agreement and all rights and obliga-
tions hereunder shall be governed by the laws of the State of
Illinois; provided, however, that the parties shall be entitled to
all rights conferred by 49 U.S.C. §11303 and such additional rights
arising out of the filing, recording and depositing hereof and
of any assignment hereof as shall be conferred by the laws of the
several jurisdictions in which this Agreement or any assignment
hereof shall be filed, recorded or deposited.

SECTION 24. DEFINITIONS.

The term "Vendor", whenever used in this Agreement, means,
before any assignment of any of its rights hereunder, Whitehead &
Kales Company, and any successor or successors for the time being
to the properties and business thereof, and, after any such assign-
ment, any assignee or assignees for the time being of such particular
assigned rights as regards such rights, and also any assignor as
regards any rights hereunder that are retained and excluded from
any assignment.

SECTION 25. PAYMENT OF EXPENSES.

The Railroad will pay all reasonable costs, charges and expenses, except the counsel fees of the Vendor, but including the fees and expenses of special counsel for the Investor and including stamp and other taxes, if any, incident to the printing or other duplicating, execution, acknowledgment, delivery, filing or recording of this Agreement, of any instrument supplemental to or amendatory of this Agreement, and of any certificate of the payment in full of the indebtedness in respect of purchase price due hereunder.

SECTION 26. CONSOLIDATION OR MERGER.

In case of any consolidation or merger to which the Railroad or the Vendor shall be a party, or in case of any sale of all or substantially all the assets of the Railroad or the Vendor, the corporation resulting from such consolidation or merger (if other than the Railroad or the Vendor) or the corporation which shall acquire such assets, shall expressly assume all obligations hereunder, not then performed, of the Railroad or the Vendor, as the case may be, and shall become entitled to all rights hereunder of the Railroad or the Vendor, as the the case may be.

SECTION 27. INSURANCE.

The Railroad will at all times after delivery and acceptance of each Item of Equipment, at its own expense, keep or cause to be kept each such Item insured by a reputable insurance company or companies in amounts and against risks customarily insured against by other railroad companies on similar equipment or may maintain self-insurance in such amounts and with respect to such risks (provided that adequate reserves shall be maintained in respect of any self-insured liabilities in accordance with generally accepted accounting principles). Such insurance may provide that losses shall be adjusted with the Railroad and shall provide that the proceeds thereof shall be payable to the Vendor, the Investor and the Railroad as their interest shall appear. All proceeds of insurance received by the Investor with respect to any Items of Equipment not suffering a Casualty Occurrence shall be paid to the Railroad upon proof satisfactory to the Investor that any damage to any Item with respect to which such proceeds were paid has been fully repaired. Any such proceeds of insurance received by the Investor with respect to a Casualty Occurrence shall be credited toward the payment required by Section 6 with respect to such Casualty Occurrence.

SECTION 28. EXECUTION.

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original,

and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

WHITEHEAD & KALES COMPANY

(Corporate Seal)

Attest:

G. Konchal

G. KONCHAL ~~Secretary~~
TREASURER

By

C. E. Wieser
Its Vice President-Finance

C. E. WIESER

GRAND TRUNK WESTERN RAILROAD
COMPANY

(Corporate Seal)

Attest:

E. B. Jantone
Secretary

BY

[Signature]
Its Vice President

THE NORTHERN TRUST COMPANY

(Corporate Seal)

Attest:

[Signature]
ASST. Secretary

BY

[Signature]
Its Vice President

STATE OF *Michigan*)
COUNTY OF *Wayne*) SS.

On this 5th day of Sept, 1979, before me, personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is the Vice President-Finance of WHITEHEAD & KALES COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ardis W. Hall
Notary Public
ARDIS W. HALL
Notary Public, Wayne County, Mich.
My Commission Expires July 22, 1981

[Seal]

My Commission expires:

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

On this 31st day of August, 1979, before me personally appeared William S. Trukenbrod, to me personally known, who being by me duly sworn, says that he is the Vice President of THE NORTHERN TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Kathryn Klein
Notary Public

(Seal)

My commission expires:

April 28, 1983.

SCHEDULE A
(to Conditional Sale Agreement
and Assignment)

VENDOR:	Whitehead & Kales Company
PLANT OF VENDOR:	River Rouge, Michigan
DESCRIPTION OF EQUIPMENT:	49 Fully-enclosed Bi-level Automobile Racks bearing rack numbers GTW 504175 to GTW 504223 both inclusive
SPECIFICATIONS:	Whitehead & Kales Company ASK-6902
BASE PURCHASE PRICE (subject to change):	\$31,000 per Item (\$1,519,000 for 49 Items)
MAXIMUM PURCHASE PRICE:	\$34,100 per Item (\$1,670,900 for 49 Items)
DELIVERY TO:	Grand Trunk Western Railroad Company
PLACE OF DELIVERY:	River Rouge, Michigan
ESTIMATED DELIVERY DATES:	August and September, 1979
OUTSIDE DELIVERY DATE:	September 28, 1979
BUYER:	Grand Trunk Western Railroad Company
ASSIGNEE OF VENDOR:	The Northern Trust Company