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INTERSTATE COMMERCE COMMISSION

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**CONDITIONAL SALE AGREEMENT**

**dated as of June 15, 1974,**

**Between**

**WHITTAKER CORPORATION,  
BERWICK FORGE AND FABRICATING DIVISION**

**and**

**FIRST SECURITY BANK OF UTAH, N.A.,  
*as Owner-Trustee***

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**AGREEMENT AND ASSIGNMENT**

**Dated as of June 15, 1974**

**between**

**WHITTAKER CORPORATION,  
BERWICK FORGE AND FABRICATING DIVISION**

**and**

**TRUST COMPANY OF GEORGIA,  
*as Agent***

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**CONDITIONAL SALE AGREEMENT** dated as of June 15, 1974, between WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION, a California corporation (hereinafter called the Vendor or Builder as more particularly set forth in Article 24 hereof), and FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Vendee), not in its individual capacity but solely in its capacity as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns (hereinafter called the Beneficiary).

WHEREAS, the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to Grand Trunk Western Railroad Company (hereinafter called the Lessee), in substantially the form annexed hereto as Annex D (hereinafter called the Lease);

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of the Equipment, and each unit of the Equipment (except to the extent, if any, referred to in Annex A hereto and/or Article 6 hereof) will be new railroad equipment.

**ARTICLE 2. *Inspection and Delivery.*** The Builder will deliver the units of the Equipment to the Vendee at the place or places within the United States of America specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places within the United States of America designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto. Any loss incurred after acceptance by Vendee at the Builder's plant, Berwick, Pennsylvania, shall be the sole responsibility of the Vendee.

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

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted on or before December 31, 1974, and settled for pursuant to Article 3 hereof on or before the Cut-Off Date shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the parties to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall promptly execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Vendee

on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof.

**ARTICLE 3. *Purchase Price and Payment.*** The base price per unit of the Equipment is set forth in Annex B hereto. Such base price is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee to cover inter alia escalation in labor materials and manufacturing costs of the Builder. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased plus all prepaid freight charges. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate Purchase Price plus an amount equal to the aggregate Accessory Cost (as hereinafter defined) paid by the Vendor would, but for the provisions of this sentence, exceed \$2,364,864 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price and Accessory Cost to not more than \$2,364,864 (or such higher amount as aforesaid).

The Equipment shall be settled for in not more than two groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called the Group). The term "Closing Date" with respect to the Group shall mean a business day on or prior to January 15, 1975 (such date being herein called the Cut-Off Date), following presentation by the Builder to the Vendee of the invoice and Certificate or Certificates of Acceptance for the Equipment, as shall be fixed by the Builder and the Lessee by written notice delivered to the Vendee at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Atlanta, Georgia, are authorized or obligated to be closed.

Upon delivery and acceptance of the Equipment (excluding the Accessories as hereinafter defined), the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of such Equipment, as follows:

(a) On the Closing Date with respect to a Group an amount equal to 20% of the aggregate Purchase Price of the Group plus the amount, if any, by which 80% of the Purchase Price of the Group exceeds \$1,750,000; and

(b) In consecutive semiannual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate Purchase Price of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the Conditional Sale Indebtedness shall be payable on each January 15 and July 15 commencing July 15, 1975, to and including July 15, 1988 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 9.7% per annum and such interest shall be payable to the extent accrued, on January 15, 1975, and on each July 15 and January 15 thereafter. The principal amount of Conditional Sale Indebtedness payable on each of the Payment Dates shall be calculated on such basis that the aggregate of the principal and interest payable on each of such Payment Dates shall be substantially equal and such instalments of principal will completely amortize the Conditional Sale Indebtedness.

The Vendee, the Lessee and Evans Products Company (hereinafter called the Supplier) are entering into an Accessory Installation Agreement dated as of the date hereof in the form of Annex C hereto (hereinafter called the Accessory Installation Agreement) pursuant to which, after delivery of each unit of Equipment hereunder, the Vendee will cause the Supplier to install on each such unit certain load restraining equipment as described in the Lease (hereinafter called the Accessories). The Accessories shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and, from and after the installation

thereof, shall be included in the term Equipment as used herein (except for the purposes of Items 1 and 2 of Annex A hereto). The Vendee agrees with the Vendor that the Vendee will pay 100% of the invoiced cost (herein called the Accessory Cost) of the Accessories subject to the limitations contained in the Accessory Installation Agreement. If upon completion of all Closing Dates hereunder and all closings under the Accessory Installation Agreement, the Conditional Sale Indebtedness shall exceed an amount equal to 74% of the aggregate of the Purchase Price of the Equipment and the Accessory Cost, the Vendee shall forthwith prepay such principal amount of Conditional Sale Indebtedness (together with interest thereon at the rate of 9.7% to the date of prepayment) as will decrease the aggregate unpaid Conditional Sale Indebtedness to an amount equal to 74% of the aggregate of the Purchase Price of the Equipment and the Accessory Cost. On or before January 15, 1975, the Vendee shall furnish to the Vendor a statement of the aggregate of the Purchase Price of the Equipment and the Accessory Cost.

The Vendee will furnish to the Vendor promptly after the Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

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

The Vendee will pay interest, to the extent legally enforceable, at the rate of 10.7% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in this Article 3 and in Articles 6 and 16 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph

(a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment between the Builder and the Assignee (as hereinafter defined) (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 24 hereof).

It is agreed that the obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of the third paragraph of this Article 3 with respect to the Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it in respect of such Group as provided in the preceding paragraph of this Article 3 and in Section 5 of the Assignment and the documents required by Section 5 of the Assignment shall have been delivered;

(b) no Event of Default of the Lessee under the Lease, nor any event which with lapse of time and/or demand provided for in the Lease could constitute such an Event of Default, shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinions of counsel required by Section 14 of the Lease, (ii) copies of documents delivered pursuant to Section 5 of the Assignment and (iii) such other documents as the Vendee may reasonably request.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 13, 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph and the fifth paragraph of Article 3 hereof and Article 19 hereof, shall not exceed an amount equal to, and shall be payable only out of, the

“income and proceeds from the Equipment”, and such payments shall be made by the Vendee only to the extent that the Vendee (which term includes the Vendor as assignee of the Lease or any other assignee of the Vendee) shall have actually received sufficient “income or proceeds from the Equipment” to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no personal liability to make any payments under this Agreement whatsoever except from the “income and proceeds from the Equipment” to the extent actually received by the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee’s obligations thereunder and (ii) shall not be responsible for the performance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor’s rights under this Agreement against the Equipment and to the Vendor’s rights under the Lease against the Lessee and the Equipment. As used herein the term “income and proceeds from the Equipment” shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition and any and all other payments received by the Vendee or any assignee of the Vendee under Section 9 or any other provision of the Lease, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within three business days after, the date such amounts received by the Vendee were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it

being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within three business days after, the date on which amounts with respect thereto received by the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments or obligations hereunder or to proceed against the Lessee under the Lease. Notwithstanding anything to the contrary contained in Article 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and that no judgment obtained against the Vendee shall be filed in any office where the effect of such filing shall constitute a lien on any property of the Vendee other than the Equipment, the Lease and the proceeds thereof.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement. Any and all additions to the Equipment (except to the extent provided in Section 8 of the Lease), and any and all parts installed on and additions and replacements made to any unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 21 hereof and (b) execute and deliver at the same place, for filing, 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 Vendee to the Equipment. The Vendee 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 instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 5. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may

be imposed upon the Equipment delivered to it or for the use or operation thereof 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 impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any impositions 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 Vendee shall have approved the payment thereof.

ARTICLE 6. *Maintenance and Repair: Casualty Occurrences.* The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair, reasonable wear and tear excepted.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Vendee shall promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 6) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale

Indebtedness and the Vendee will promptly furnish the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee (or any party designated by the Vendee) of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee (or such party) to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 6), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

**ARTICLE 7. *Assignment of Lease.*** The Vendee, concurrently with the execution and delivery of this Agreement, is assigning to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Lease. The Vendee agrees that the "income and proceeds from the Equipment" (as defined in Article 3 hereof) received by the Vendor may be applied by the Vendor to discharge the obligations of the Vendee hereunder and the Vendor agrees to pay to the Vendee (or to the order of the Vendee at such address as the Vendee may specify in writing) any moneys paid to the Vendor under the Lease not constituting "income and proceeds from the Equipment".

ARTICLE 8. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name and address of the Vendor followed by the words "Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such name and words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such name and words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment

used by them of the same or a similar type for convenience of identification of the rights of the Lessee or its Affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Vendee 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 under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* that so long as the Lessee shall not be in default under the Lease, the Lessee shall be entitled to the possession and use of the Equipment.

So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor), or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Vendee shall not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Vendee may also lease the Equipment to any other company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's title thereto or property therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by 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 in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. 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, and the conveyance of security title to, the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The agreements of the parties relating to the Builder's warranty of material and workmanship and the Builder's patent indemnification contained in Items 1 and 2 of Annex A hereto are herein incorporated as part of Article 13 hereof.

ARTICLE 14. *Assignments.* The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights

under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement except that the Vendee may sell, assign, transfer or otherwise dispose of its rights under this Agreement to a bank or trust company having an aggregate of capital and surplus of at least \$25,000,000 without having to remain liable for the Vendee's obligations hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time; *provided, however*, that any such assignment or reassignment of such right to receive payments shall include the right to receive payment of not less than all of the Conditional Sale Indebtedness. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained or referred to in Articles 1, 2, 3, 5, 7 and 13 hereof and this Article 14 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee expressly represents,

for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, subject to the provisions of the last paragraph of Article 3 hereof, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for 15 days; or

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

(c) Any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or exten-

sions, 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 Vendee 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 Vendee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

(e) An Event of Default as defined in the Lease shall occur;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 11 hereof, cause the Lease immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 3 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall 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 Vendee wherever situated, subject to the provisions of Articles 3 and 22 hereof. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee 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.

**ARTICLE 16. Remedies.** At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements 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 one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee, subject, however, to any mandatory requirements of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee will (subject to the rights of the Lessee set forth in Article 11 hereof), at its own expense, forthwith and in the usual manner (including, but not by way of limitation giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and

(b) the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the earlier of (x) the date the Vendor shall have leased, sold or otherwise disposed of the same or (y) the 270th day from the date all units of the Equipment shall have been placed for storage on such lines or premises, and for such purpose the Vendee agrees to cause to be furnished, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee 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 unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the

Equipment shall pass to and vest in the Vendee; *provided, further*, that if the Vendee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the 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. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 21 hereof and if such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Vendee hereunder.

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. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay

such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. 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 Vendee.

The Vendee 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 reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, 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 or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* Prior to the delivery and acceptance of any unit of the Equipment, the Vendee will cause this Agreement, any assignments hereof by the Vendee, the Accessory Installation Agreement, and any supplements hereto and thereto, and prior to the settlement for such unit, the Vendee will cause any assignment hereof by the Builder and any supplement thereto, in each case (i) to be filed, registered, recorded or deposited and refiled, re-registered, rerecorded or redeposited, with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Com-

merce Act, (ii) to be deposited in the office of the Registrar General of Canada (and will cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette*) in accordance with Section 86 of the Railway Act of Canada and (iii) to be filed in the office of the Minister of Financial and Commercial Affairs of the Province of Ontario, Canada, in accordance with Section 3(1) of the Conditional Sales Act of Ontario.

The Vendee will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments reasonably requested by the Vendor for the purpose of proper protection in the United States of America and the Province of Ontario, Canada, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 19. *Payment of Expenses.* The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Agreement and for any party acquiring interests in such first assignment.

ARTICLE 20. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the annexes and schedules hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 21. *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 its chief place of business at the following specified addresses:

(a) to the Vendee, at 79 South Main Street, Salt Lake City, Utah 84111, attention: Trust Department, Robert Clark, Trust New Business Officer (with a copy to Itel Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention: Contracts Administration Department),

(b) to the Builder, at P. O. Box 188, West Ninth Street, Berwick, Pa. 18603,

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

or at such other address as may have been furnished by such person to such other persons in a written notice complying with this Article 21.

ARTICLE 22. *Immunities: Satisfaction of Undertakings.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the Vendee or the Builder or the Vendor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the first paragraph of Article 6, the second paragraph of Article 16, the second paragraph of Article 18 and under Articles 5, 8, 9, 10, 12 and 13 hereof are deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Beneficiary or on account of any representation, undertaking or agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing herein contained shall limit, restrict or impair the rights of the Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against the Vendee (*provided* that neither the Vendee in its fiduciary or individual capacity nor the Beneficiary shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of the Vendee or the Beneficiary) or, subject to the terms and conditions of the Lease, to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Lessee under the Lease.

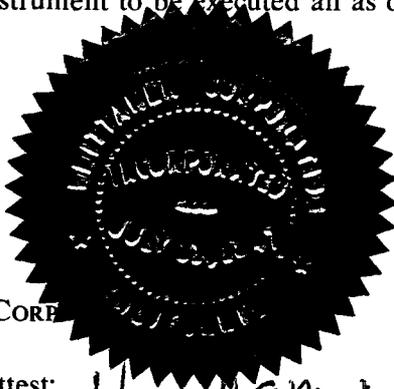
**ARTICLE 23. *Law Governing.*** The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Utah; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, the applicable recording laws of Canada and of the Provinces and Territories thereof and such additional rights arising out of the filing, recording, registering or depositing hereof and of any assignment hereof and out of the marking on the Equipment as shall be conferred by the laws of the several jurisdictions

in which the Equipment may be located and in which this Agreement or any assignment hereof shall be filed, recorded, registered or deposited. The Vendee warrants that its chief place of business is in the State of Utah.

ARTICLE 24. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 25. *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 as of the date set forth on the cover hereof for convenience, 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 executed or caused this instrument to be executed all as of the date first above written.



WHITTAKER CORPORATION, BERWICK  
FORGE AND FABRICATING DIVISION

by *[Signature]*  
Authorized Signatory

[CORP

Attest: *Howard E McKenna*  
Authorized Signatory

FIRST SECURITY BANK OF UTAH, N.A.,

by *W. Steve Segmiller*  
Authorized Officer

[CORPORATE SEAL]

Attest: *John Larson*  
Authorized Officer

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this *17th day of September* 1974, before me personally appeared *W. Starr Seymour*, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association 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 national association.

[NOTARIAL SEAL]  
My Commission expires  
*July 22, 1978*

*Debbie J. Sangerfeld*

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF COLUMBIA } ss.:

On this *27th day of September*, 1974, before me personally appeared *James J. Malatras*, to me personally known, who, being by me duly sworn, says that he is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION, 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 or the Executive Committee thereof and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]  
My Commission expires

Notary Public,

*Lloyd H. Adams*

LLOYD H. ADAMS, NOTARY PUBLIC  
BERWICK BOROUGH, COLUMBIA COUNTY  
MY COMMISSION EXPIRES SEPT. 19, 1978  
Member, Pennsylvania Association of Notaries

**ANNEX A TO CONDITIONAL SALE AGREEMENT—  
WHITTAKER-BERWICK**

ITEM 1: The Builder warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth in Article 1 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Lessee and not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation under this Item 1 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to the Builder with transportation charges prepaid, within one year after the delivery of such unit to the Lessee, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. **The foregoing warranty of the Builder is expressly in lieu of all other warranties, express or implied, including any implied warranty of merchantability or fitness for a particular purpose, except for its obligations or liabilities under Articles 1, 2, 3 and 13 of the Agreement, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment, except as aforesaid. In no event shall the Builder be liable for special or consequential damages.**

The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in Article 2 of the Agreement nor any examination nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Item 1.

ITEM 2: The Builder agrees to indemnify, protect and hold harmless the Vendee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, its assigns or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right, except any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon

or accruing against the Vendee, its assigns, or the Lessee because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination specified by the Lessee and not developed or purported to be developed by the Builder or any article or material specified by the Lessee and not manufactured by the Builder. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment, on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

## ANNEX B TO CONDITIONAL SALE AGREEMENT

<u>Type</u>	<u>Builder's Specification</u>	<u>Builder's Plant</u>	<u>Lessee's Road Numbers</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Delivery</u>
70-ton 50'6" Box Cars ..... AAR Class XL	Spec. No. C73-0808-8 dated January 12, 1974	Berwick, Pennsylvania	GTW309300 to 309399 (inclusive)	100	\$21,635.50	\$2,163,550	September- October, 1974 at Berwick, Pennsylvania

**ANNEX C**

**ACCESSORY INSTALLATION AGREEMENT** dated as of June 15, 1974, among **FIRST SECURITY BANK OF UTAH, N.A.** (hereinafter called the Vendee), not in its individual capacity but solely in its capacity as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement), with **FIRST SECURITY LEASING COMPANY** or its successors and assigns, **GRAND TRUNK WESTERN RAILROAD COMPANY** (hereinafter called the Lessee) and **EVANS PRODUCTS COMPANY** (hereinafter called the Supplier).

WHEREAS the Vendee has entered into a conditional sale agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) with **WHITTAKER CORPORATION, Berwick Forge and Fabricating Division** (hereinafter called the Builder) for the purchase from the Builder of the new standard-gauge railroad equipment referred to in the Conditional Sale Agreement (hereinafter called the Equipment); and

WHEREAS the Builder has assigned to Trust Company of Georgia, as Agent (hereinafter called the Assignee), pursuant to an agreement and assignment dated as of the date hereof, the right, title and interest of the Builder under the Conditional Sale Agreement, all upon and subject to the terms and conditions therein set forth;

WHEREAS the Vendee has entered into a Lease of Railroad Equipment with the Lessee dated as of the date hereof (hereinafter called the Lease) covering the Equipment, which Lease has been assigned to the Assignee as additional security under the Conditional Sale Agreement; and

WHEREAS the Vendee at the request of the Lessee proposes to have the Supplier install on each item of the Equipment certain DF-2-loading equipment described in Schedule A hereto (each such item being hereinafter called an Accessory);

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and agreements hereinafter contained, the parties hereto hereby agree as follows:

1. Subject to the provisions of Paragraph 2 of this Agreement, if the Vendee shall cause Accessories to be installed on any unit of Equipment on or before December 31, 1974, the Vendee will on such date or dates

(hereinafter called Accessory Closing Dates) prior to January 15, 1975, following presentation by the Supplier to the Vendee of the invoices and bills of sale referred to in Paragraph 2 hereof, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Supplier at least six business days prior to the Accessory Closing Date designated therein, pay to the Supplier an amount equal to the aggregate Accessory Cost, provided, however, that the sum of such amounts payable by the Vendee and the aggregate Purchase Price of the Equipment under and as defined in the Conditional Sale Agreement shall not exceed \$2,364,864. The Supplier agrees to use its best efforts to fix Accessory Closing Dates so that there will not be more than two Accessory Closing Dates. The term Accessory Cost shall mean the actual cost of any Accessory, as evidenced by an invoice or invoices of the Supplier. If on any Accessory Closing Date the aggregate Accessory Cost paid by the Vendee plus an amount equal to the Aggregate Purchase Price under and as defined in the Conditional Sale Agreement would, but for the provisions of this sentence exceed \$2,364,864, the Supplier and the Lessee will, upon request of the Vendee, enter into an agreement excluding from this Agreement such Accessory or Accessories specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price and Accessory Cost to not more than \$2,364,864. Notwithstanding the preceding provisions of this Paragraph 1 any Accessories not delivered, installed and accepted on or before December 31, 1974, and settled for prior to January 15, 1975 shall be excluded herefrom.

2. The Vendee shall not be required to make payment in respect of any Accessory unless the Vendee and the Assignee shall have received in respect thereof:

(a) an invoice or invoices from the Supplier of such Accessory approved by the Lessee and a Certificate of Delivery (as defined in the Lease) in respect of such Accessory;

(b) a bill or bills of sale of the Supplier transferring security title to such Accessory to the Assignee and beneficial ownership to the Vendee, containing a warranty to the Assignee and the Vendee that at the time of installation of such Accessory the Supplier had legal title thereto and good and lawful right to sell the same as provided herein free from all claims, liens and encumbrances;

(c) an opinion or opinions of counsel for the Supplier to the Assignee and the Vendee to the effect that such bill or bills of sale are valid and effective, either alone or in connection with any other instrument referred to in such opinion, to vest in the Assignee security title to such Accessory and to vest in the Vendee beneficial ownership subject to such security title;

(d) an opinion or opinions of counsel for the Lessee to the Assignee and the Vendee to the effect that each such Accessory constitutes an accession to the unit of Equipment to which it has been installed, and, as such, is subject to all the terms and conditions of the Conditional Sale Agreement;

(e) Certificate or Certificates of Accessory Installation with respect to such Accessories; and

(f) a certificate of an officer of the Lessee to the effect that none of the Accessories was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such Accessories under this Agreement and the Lease.

The Vendee shall not be obligated to make any of the above-mentioned payments at any time when an Event of Default under the Lease, or any event which with lapse of time and/or demand provided for in the Lease could constitute such an Event of Default, shall have occurred and be continuing. In the event the Supplier is not paid the entire Accessory Cost for any reason on any Accessory Closing Date, as hereinbefore provided, the Lessee hereby agrees with the Supplier to pay such Accessory Cost or any unpaid part thereof to the Supplier within 30 days after such Accessory Closing Date. To the extent that any Accessory Cost or any part thereof is paid to the Supplier by the Lessee, as hereinabove provided, the Accessories so paid for by the Lessee shall be excluded from this Agreement and the Lease.

3. Any and all Accessories and any and all replacements thereof, whether in whole or in part, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of the Conditional Sale Agreement and the Lease and included in the terms "Equipment" and "Units" as used therein.

4. The Lessee agrees that the Accessories will form an integral part of the Equipment and will not be removed therefrom after installation thereon.

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

FIRST SECURITY BANK OF UTAH,  
N.A.,

by .....  
*Authorized Officer*

[CORPORATE SEAL]

Attest:

.....  
*Authorized Officer*

GRAND TRUNK WESTERN  
RAILROAD COMPANY,

by .....  
*Vice President*

[CORPORATE SEAL]

Attest:

.....

EVANS PRODUCTS COMPANY,

by .....

[CORPORATE SEAL]

Attest:

.....





**SCHEDULE A**

<b>Description of Load Restraining Equipment</b>	<b>Quantity</b>	<b>Unit Base Price Installed*</b>	<b>Total Base Price Installed*</b>
[DF-213380-9 DF-2 Belt Installation] ...	100	\$1,676.00	\$167,600

\* The Unit Base Price and Total Base Price are subject to such increase or decrease as is agreed to by the Supplier, the Vendee and the Lessee.

**LEASE OF RAILROAD EQUIPMENT**

**between**

**FIRST SECURITY BANK OF UTAH, N.A.,  
as Owner Trustee**

**and**

**GRAND TRUNK WESTERN RAILROAD COMPANY**

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**Dated as of June 15, 1974**

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**LEASE OF RAILROAD EQUIPMENT** dated as of June 15, 1974, between **FIRST SECURITY BANK OF UTAH, N.A.** (hereinafter called the Lessor), not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with **FIRST SECURITY LEASING COMPANY** or its successors and assigns (hereinafter called the Beneficiary) and **GRAND TRUNK WESTERN RAILROAD COMPANY** (hereinafter called the Lessee).

WHEREAS, the Lessor has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter referred to as the Builder), wherein the Builder agrees to manufacture, sell and deliver to the Lessor the units of railroad equipment described in Schedule A hereto; and

WHEREAS, the Builder proposes to assign its interest in the Conditional Sale Agreement to Trust Company of Georgia, as Agent (hereinafter referred to as the Vendor); and

WHEREAS, the Lessor has entered into an Accessory Installation Agreement dated as of June 15, 1974 (hereinafter called the Accessory Installation Agreement), with the Lessee and Evans Products Company, wherein the Lessor agrees to have installed the accessories described in Schedule A hereto (hereinafter called the Accessories); and

WHEREAS, the Lessee desires to lease all the units of said railroad equipment and the Accessories, or such lesser number of each as are delivered and accepted on or before December 31, 1974, and settled for under the Conditional Sale Agreement or the Accessory Installation Agreement, as the case may be, on or prior to January 15, 1974 (such units being hereinafter called the Units), at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS, Canadian National Railway Company, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), of which the Lessee is a wholly-owned subsidiary, has agreed, subject to receipt of the approval of The Governor General in Council, to guarantee to the Lessor and the Vendor, as provided in a Guaranty Agreement dated as of June 15, 1974 (hereinafter called the Guaranty Agreement), with the Lessor and the Vendor, the due and punctual payment of the sums payable

by, and the due and punctual performance of all other obligations of, the Lessee under this Lease;

NOW, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor under the Conditional Sale Agreement:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized inspector of the Lessee to inspect the same, and if such Unit is found to be in good order and in accordance with the specifications set forth in the Conditional Sale Agreement (and modifications, if any, previously approved by the Lessee), to accept delivery of such Unit and will cause such inspector or an authorized representative of the Lessee to execute and deliver to the Lessor and to the Builder a certificate or certificates of acceptance and delivery for such Unit (hereinafter called a Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease. In no event shall the Lessee place any Unit in service or otherwise use any Unit prior to the Lessee's acceptance of delivery of such Unit hereunder.

The Lessor will cause each Accessory to be tendered to the Lessee at the point or points within the United States of America at which, and on the date or dates on which, such Accessory is delivered to the Lessor and installed on a Unit under the Accessory Installation Agreement. Upon such tender, the Lessee will cause an authorized inspector of the Lessee to inspect the same, and if such Accessory is found to be in good order and in accordance with the specifications set forth in the Accessory Installation Agreement (and modifications, if any, previously approved by the Lessee), to accept delivery of such Accessory and will cause such inspector or an authorized representative of the Lessee to execute and deliver to the Lessor and to the Supplier a certificate or certificates of acceptance and installation for such Accessory (hereinafter called a Certificate of Accessory Installation), whereupon such Accessory, shall be deemed to have been

delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease and included within the term Unit as used herein. In no event shall the Lessee place any Accessory in service or otherwise use any Accessory prior to the Lessee's acceptance of installation of such Accessory hereunder.

The Lessee represents and warrants that, at the time of delivery of each Unit or Accessory to the Lessee, such Unit or Accessory, as the case may be, will not have been used by the Lessee and no amortization, depreciation or investment credit will have been claimed by the Lessee with respect thereto.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease an interim and 30 consecutive semiannual payments. The interim payment is payable on the business day next preceding January 15, 1975. The 30 semiannual payments are payable on the business day next preceding January 15 and July 15 of each year commencing July 15, 1975. The interim payment shall be an amount equal to

(i) with respect to each Unit (excluding the Accessory to be installed thereon) subject to this Lease from and including the date such Unit is settled for under the Conditional Sale Agreement to January 15, 1975, a rate of 9.7% per annum on the percentage of the Purchase Price of such Unit calculated pursuant to subparagraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement, such rate to be computed on the basis of a 360 day year of twelve 30 day months, plus for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to January 15, 1975, the Interim Rate multiplied by the percentage of the Purchase Price of such Unit calculated pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement, and

(ii) with respect to each Accessory subject to this Lease for each day elapsed from and including the date such item is settled for under the Accessory Installation Agreement to January 15, 1975, the Interim Rate multiplied by the Accessory Cost (as defined in the Accessory Installation Agreement) of each such item.

The Interim Rate shall be equal to the daily equivalent (calculated on the basis of a 360 day year) of the interest rate payable by the Beneficiary

pursuant to the terms of a Loan Agreement or Loan Agreements entered into for the purpose of funding the Beneficiary's investment under Article 3 of the Conditional Sale Agreement to January 15, 1975. The 30 semiannual payments shall each be in an amount equal to 5.26817% of the Purchase Price of each Unit at the time subject to this Lease. The term "Purchase Price" as used in this Agreement shall mean the sum of the Purchase Price (as defined in the Conditional Sale Agreement) for each Unit (without Accessory) plus the Accessory Cost for the Accessory installed on each such Unit.

The Lessor irrevocably instructs the Lessee (and the Lessee hereby agrees) that all payments provided for in this Lease to be made to the Lessor shall be paid to the account of the Lessor, care of the Vendor, 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham, and such payments shall be applied by the Vendor to satisfy the obligations of the Lessor under the Conditional Sale Agreement accrued at the time such payments are due hereunder, with any balance being paid to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatement, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Builder or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use of or destruction of all or any of the Units from whatsoever cause, the prohibition of or other restriction against use of all or any of the Units by the Lessee or any other person, the interference with such use by any person, the invalidity or unenforceability or lack of due authorization of this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

§ 3. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and,

subject to the provisions of §§ 6, 9 and 12 hereof, shall terminate on the date on which the final semiannual payment of rent in respect thereof is due hereunder.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subordinate, junior in rank and subject to the rights of the Vendor under the Conditional Sale Agreement.

§ 4. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such Unit, in letters not less than one inch in height, the following words:

“TRUST COMPANY OF GEORGIA,  
25 Pryor Street,  
Atlanta, Georgia 30302  
AGENT—SECURITY OWNER”

or other appropriate words designated by the Lessor, with appropriate changes therein and additions thereto as from time to time may be required by law in order to protect the title of the Lessor or the Vendor to such Unit and the rights of the Lessor under this Lease and of the Vendor under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such word or words shall have been so marked on both sides thereof and will replace promptly any such word or words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where this Lease will have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered with the names or initials or

other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal or Canadian (Dominion or Provincial) or Mexican taxes (other than (i) any United States federal income tax and, to the extent that the Lessor receives credit for such taxes against its United States federal income tax liability, any Canadian [Dominion or Provincial] or Mexican income tax, payable by the Lessor in consequence of the receipt of payments provided herein and (ii) the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments, duties or license fees, and any charges, fines or penalties in connection therewith (all such expenses, taxes, assessments, duties, license fees, charges, fines and penalties being hereinafter called impositions), now or hereafter levied or imposed upon or in connection with or measured by (i) this Lease or (ii) any sale, rental, use, payment, shipment, import, export, delivery or transfer of title under the terms hereof or of the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. At the option of the Lessor, such payment of impositions by the Lessee shall be made directly to the appropriate taxing authority. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, materially adversely affect the Lessor. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Vendor pursuant to Article 5 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations to the Builder and the Vendor pursuant to said Article 5.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such Units or notify the Lessor and the Vendor of such requirement and will make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, irreparably damaged or damaged beyond economic repair, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease, the Lessee shall promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, fully inform the Lessor and the Vendor in regard thereto. On the next succeeding rental payment date the Lessee shall pay to the Lessor an amount equal to the unpaid rental for such Unit due and payable on such date plus a sum equal to the Casualty Value, as hereinafter defined, of such Unit as of such rental payment date in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue thereafter and the terms of this Lease as to such Unit shall terminate. The Lessor shall, upon request of the Lessee, after payment by the Lessee of a sum equal to the unpaid rental for such Unit due and payable and the Casualty Value of any Unit, execute and deliver to or upon the order of the Lessee a bill of sale (without warranties) for such Unit or for any Unit abandoned pursuant to § 13 hereof.

The Casualty Value of each Unit as of any semiannual rental payment date shall be that percentage of the Purchase Price applicable to such Unit set forth in the schedule set out below opposite the number of such rental payment date (such numbers commencing with the rental payment due on July 15, 1975 and "Interim" referring to the payment due on January 15, 1975):

<u>Payment No.</u>	<u>Percentage</u>	<u>Payment No.</u>	<u>Percentage</u>
Interim.....	90.7878%	16.....	66.5932%
1.....	91.3736	17.....	63.4891
2.....	91.5742	18.....	60.2569
3.....	91.4634	19.....	56.8936
4.....	91.0241	20.....	53.0478
5.....	90.3037	21.....	49.7934
6.....	89.2688	22.....	46.0621
7.....	87.9601	23.....	42.2054
8.....	86.3535	24.....	38.2945
9.....	84.4832	25.....	34.3996
10.....	82.3595	26.....	30.5979
11.....	80.0827	27.....	26.8633
12.....	77.6612	28.....	23.2682
13.....	75.1002	29.....	19.3846
14.....	72.4002	30.....	15.0000
15.....	69.5635		

Notwithstanding the foregoing, the Casualty Value of each Unit as of any such rental payment date occurring after the expiration of the original term of this Lease shall be the lesser of 15% of the Purchase Price applicable to such Unit or the Fair Market Value of such Unit prior to such occurrence determined in accordance with the provisions of § 12 hereof.

The foregoing percentages have been computed without regard to recapture of the Investment Credit (as defined in §9 hereof). Consequently, the Casualty Value of any Unit suffering a Casualty Occurrence on or before the third, fifth and seventh anniversary of the date of delivery and

acceptance of such Unit shall be increased by the applicable percentage of the Purchase Price set forth below.

<u>Anniversary of Delivery and Acceptance</u>	<u>Percentage of Purchase Price</u>
Third .....	13.4615%
Fifth.....	8.9744
Seventh.....	4.4872

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

Although the Lessee shall not be required to maintain insurance on any Unit, the Lessee agrees that the benefits of any insurance maintained by it upon the Units will be made available to the Lessor and the Vendor, as their interests may appear, to the extent the Lessee is permitted to do so under such policies of insurance. Any net insurance proceeds as the result of insurance carried by the Lessee or proceeds of payments from any governmental agency as compensation for requisition by condemnation received by the Lessor in respect of a Unit suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of Casualty Occurrences pursuant to this § 6. If the Lessor shall receive any such net insurance proceeds or any such condemnation payments after the Lessee shall have made payments pursuant to this § 6 without deduction for such net insurance proceeds or such condemnation payments, the Lessor shall pay such proceeds to the Lessee to the extent of the Lessee's interest therein.

§ 7. *Annual Reports.* On or before March 1 in each year commencing with the year 1975, the Lessee will cause to be furnished to the Lessor and the Vendor in such number of counterparts or copies as may reasonably be requested an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units then leased hereunder, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease, in the case of the first such statement), and such other

information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease.

§ 8. *Disclaimer of Warranties; Lessor's Representations and Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose, it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name and for the account of the Lessor and/or the Lessee, as their interests may appear, whatever claims and rights the Lessor may have, as vendee, under the provisions of Article 13 of the Conditional Sale Agreement and Annex A thereto. Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessor represents and warrants as follows:

(i) At the time of delivery of each Unit under this Lease, the Lessor shall have such title to such Unit as is derived from the Builder, unimpaired by any act or omission of the Lessor which will in any manner prevent the performance of this Lease in accordance with its terms and, in addition, such Unit shall be free and clear of all claims, liens and encumbrances which may result from claims against the

Lessor not arising out of the ownership thereof which will prevent the performance of this Lease in accordance with its terms; and

(ii) So long as the Lessee shall not be in default under this Lease, the Lessor shall not do (or suffer to be done by any person claiming through or against the Lessor and not against the Lessee or any sublessee) any act which interferes with any and all rights of the Lessee to peaceably and quietly hold, possess and use the Units in accordance with the terms of this Lease.

The Lessor covenants that any sale, assignment, transfer, mortgage or other disposition which it may make of this Lease or of any Unit, whether prior or subsequent to delivery to the Lessee, shall be expressly subject to the terms and provisions of this Lease; *provided, however*, that this Lease shall be subordinated to the rights of the Vendor under the Conditional Sale Agreement but neither the Lessor nor the Vendor shall have the right to terminate or impair the Lessee's possession or use of the property subject to this Lease so long as the Lessee shall not be in default under this Lease; and, subject to the foregoing, covenants that the Lessor has not done and will not do (or suffer to be done by any person claiming through or against the Lessor) any act which interferes with or impairs (x) the Lessee's possession and use in accordance with the terms of this Lease of the Units or (y) the title to the Units which may be transferred or conveyed to the Lessee under the provisions of §§ 6 and 12 of this Lease and that any title so conveyed shall then be free of any lien, claim or encumbrance of the Vendor.

The Lessor covenants and agrees not to alter, amend or modify the Conditional Sale Agreement without the prior written consent of the Lessee, which consent shall not be unreasonably withheld.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply, and will cause every sublessee or user of the Units to comply, in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules of the Department of Transportation and the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units. In the event that such laws or rules require alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional

or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however,* that the Lessee 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 Lessor or the Vendor, materially adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair, reasonable wear and tear excepted.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit (including, but not limited to, Accessories) shall be considered accessions to such Unit (except such as can be removed without damage to, and without impairing the originally intended function or use of, such Unit, including without limitation, racks or partitions other than the Accessories or replacements thereof and except such DF-2-load restraining equipment as is excluded from the Accessory Installation Agreement pursuant to the terms thereof [such racks, partitions or DF-2-load restraining equipment other than the Accessories subject to this Lease or replacements thereof being hereinafter called Temporary Alterations]), and at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself. Upon termination of this Lease, the Lessee will remove the Temporary Alterations from the Units and restore the Units to satisfactory operating condition and to their original physical condition at the time of delivery thereof to the Lessee hereunder, reasonable wear and tear excepted.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into

or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership including strict liability of any Unit, or which may arise in any manner out of or as the result of the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury to any person; *provided, however*, that the Lessee shall not be required to indemnify the Lessor or the Vendor under this paragraph for negligence on the part of the Lessor or the Vendor unless such negligence is attributed to the Lessor or the Vendor solely by reason of their respective interests in the Units. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease. Anything herein to the contrary notwithstanding, the Lessee shall not be obligated to indemnify under this paragraph in respect of any charge, claim, expense, loss or liability attributable to a Unit which, and to an event occurring after such Unit, shall have been returned to the Lessor pursuant to § 10 or 13 hereof or after this Lease with respect to such Unit has otherwise terminated; *provided, however*, that such charge, claim, expense, loss or liability does not arise as a result of mechanical defects of such Unit which existed at the time such Unit was so returned or this Lease with respect to such Unit terminated.

The Lessee agrees to prepare and deliver to the Lessor and the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

- A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for 10 days;
- B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee hereunder or the Guarantor under the Guaranty Agreement) 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 Lessee under this Lease or of the Guarantor under the Guaranty 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 Lessee or the Guarantor or for the property of the Lessee or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceeding shall have been commenced, whichever shall be earlier; or

E. 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 Lessee 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 Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

then, in any such case, the Lessor, at its option may:

(a) proceed by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, or its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor reasonably estimates to be obtainable for the use of the Unit during such period, such present value to be computed in each case on a basis of a 5% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental and (iii) an amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States or any political subdivision thereof, shall be equal

to any portion of the 7% investment credit (hereinafter called the Investment Credit) with respect to the Purchase Price of the Units pursuant to Section 38 and related sections of the Internal Revenue Code of 1954, as amended, lost, not claimed, not available for claim, disallowed or recaptured by or from the Lessor as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease or the sale or other disposition of the Lessor's interest in any Unit after the occurrence of an Event of Default plus such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net after tax yield under this Lease to be equal to the net after tax yield that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the maximum depreciation deduction authorized with respect to a Unit under Section 167 of said Internal Revenue Code utilizing the lower limit of the "asset depreciation range" of 12 years for the Units prescribed in accordance with Section 167(m) of said Code for an asset described in Asset Guideline Class No. 00.25 as described in Revenue Procedure 72-10 1972 IRB 8, taking into account an estimated Gross Salvage Value of 10% of the Purchase Price (as defined in the Conditional Sale Agreement) of such Unit reduced by 10% of the Purchase Price as provided in Section 167 (f) of the Code (hereinafter called the Depreciation Deduction), and the interest deduction (hereinafter called the Interest Deduction) for all interest accrued on the Conditional Sale Indebtedness computed in accordance with Section 163 of said Code, which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the breach of one or more of the representations, warranties and covenants made by the Lessee in § 15 or any other provision of this Lease, the termination of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing

or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until the earlier of the date all such Units have been sold, leased or otherwise disposed of by the Lessor and the 270th day from the date the Lessee shall have placed all the Units on such storage tracks, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of,

any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as its agent and attorney, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be at the time in possession of such Unit.

§ 11. *Assignment; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease, but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof). In addition, the Lessee, at its own expense, will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units or to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interests of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use thereof by it or the Guarantor or any affiliated or subsidiary corporation thereof upon the lines of railroad owned or operated by the Lessee or the Guarantor

or any affiliated or subsidiary corporation thereof or upon lines of railroad over which the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof has trackage or other operating rights or over which railroad equipment of the Lessee or the Guarantor or any affiliated or subsidiary corporation thereof is regularly operated pursuant to contract, and also to permit the use of the Units upon other railroads in the usual interchange of traffic (if such interchange is customary at the time), but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement (including, but not limited to, Article 12 thereof).

Nothing in this § 11 shall be deemed to restrict the right of the Lessee (i) to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations of the Lessee hereunder) into or which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety or (ii) to sublease any Unit to such subsidiary or affiliated corporations of the Lessee or the Guarantor as are at the time such sublease is executed domestic railroad corporations incorporated under the laws of any state of the United States of America or the District of Columbia; *provided, however*, that the rights of such sublessee are made expressly subordinate to the rights and remedies of the Vendor under the Conditional Sale Agreement and the Lessor under this Lease. No such sublease shall relieve the Lessee of any liability or obligation hereunder which shall be and remain that of a principal and not a surety.

Notwithstanding anything to the contrary contained herein, the Lessee agrees that it will not make or permit any use of any Unit which shall result in such Unit failing to constitute "Section 38 property" within the meaning of Section 48a of the Internal Revenue Code of 1954, as amended, any successor section thereto or any regulations promulgated by the Internal Revenue Service thereunder.

§ 12. *Purchase and Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the expiration of the original term or the first renewal term

of this Lease elect (i) to purchase any or all Units then covered by this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term, and/or (ii) extend the term of this Lease in respect of all, but not fewer than all, Units then covered by this Lease and not being purchased pursuant to clause (i) of this sentence, for a five-year period commencing on the scheduled expiration of the original term or such renewal term of this Lease, as the case may be, at a rental payable in 10 semiannual payments, in an amount equal to the "Fair Market Rental" of such Units as of the end of such term.

Fair Market Value or Fair Market Rental shall be determined on the basis of, and shall be equal in amount to, the value or rental which would obtain in an arm's-length transaction between an informed and willing buyer-user or lessee, as the case may be (other than (i) a lessee currently in possession or (ii) a used equipment dealer) and an informed and willing seller or lessor, as the case may be, under no compulsion to sell or lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such value.

If on or before four months prior to the expiration of the original term or any renewal term hereof, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value or Fair Market Rental, as the case may be, of the relevant Units, such value or rental shall be determined in accordance with the foregoing definitions by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or, failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both the Lessor and the Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee. In the event the Lessee elects to purchase the Units, upon payment of the purchase price, the Lessor shall upon request of the Lessee execute and deliver to the Lessee, or to the Lessee's assignee or nominee, a bill of sale (without warranties) for such Units.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the original or any renewal term of this Lease, the Lessee will (unless the Units are sold to the Lessee or unless this Lease is then being renewed), at its own cost and expense, at the request of the Lessor, deliver possession of any Units to the Lessor upon such storage tracks of the Lessee as the Lessor may reasonably designate and permit the Lessor to store such Units on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee or to any connecting carrier for shipment, all as directed by the Lessor upon not less than 30 days' written notice to the Lessee; the movement and storage of the Units to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence or strict liability of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If the Lessor shall elect to abandon any Unit which has suffered a Casualty Occurrence or if, after the expiration of this Lease, the Lessor shall elect to abandon to the Lessee any Unit, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice.

§ 14. *Opinions of Counsel for the Lessee, the Guarantor, the Lessor and the Manufacturer.* On the Closing Date (as that term is defined in the Conditional Sale Agreement), as a condition to the obligation of the Lessor to continue thereafter to lease the Units to the Lessee hereunder, the Lessee will deliver to the Lessor and the Vendor counterparts, addressed to the

Lessor and the Vendor, in scope and substance satisfactory to the Lessor and the Vendor and their respective counsel, of:

(i) the written opinion of counsel for the Lessee to the effect that:

A. the Lessee is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into this Lease;

B. this Lease, the Finance Agreement and the Accessory Installation Agreement have been duly authorized, executed and delivered by the Lessee and, assuming due authorization, execution and delivery by the other parties thereto, constitute legal and valid agreements binding upon the Lessee and enforceable in accordance with their terms;

C. this Lease, the assignment of this Lease to the Vendor, the Accessory Installation Agreement, the Conditional Sale Agreement and the Agreement and Assignment dated as of June 15, 1974 (hereinafter called the Assignment), between the Builder and the Vendor have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor and the Vendor in and to the Units in any State of the United States of America and the District of Columbia;

D. no approval is required from any public regulatory body with respect to the entering into or performance of this Lease or the Accessory Installation Agreement by the Lessee, or if any such approval is required, it has been properly obtained;

E. the entering into and performance of this Lease and the Accessory Installation Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter

cover or affect, any property or interests therein of the Lessee now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Lessor's or the Vendor's right, title and interest therein (except to the extent that the provisions of any mortgage now or hereafter created on any of the lines of railroad of the Lessee may subject the Lessee's leasehold interest to the lien thereof); and

(ii) the written opinion of counsel for the Guarantor to the effect that:

A. the Guarantor is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement;

B. the Guaranty Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable in accordance with its terms;

C. upon due deposit of this Lease, the assignment of this Lease to the Vendor, the Conditional Sale Agreement, the Accessory Installation Agreement, and the Assignment in the office of the Registrar General of Canada and upon the giving of notice of such deposit in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC), no other act, filing, recording or deposit (or giving of notice) in respect of this Lease is necessary in order to protect the interests hereunder of the Lessor in and to the Units in the Dominion of Canada or any Province or Territory thereof;

D. no approval is required of any governmental ministry or agency or public regulatory body with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or, if any such approval is required, it has been duly obtained; and

E. the entering into and performance of the Guaranty Agreement will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust or other agreement or instrument to which the Guarantor is a party or by which it may be bound.

On the Closing Date, the Lessor will deliver to the Vendor, the Lessee and the Guarantor counterparts, addressed to the Vendor, the Lessee and the Guarantor, in scope and substance satisfactory to the Vendor, the Lessee and the Guarantor and their respective counsel:

(i) of the written opinion of counsel for the Lessor, to the effect that:

A. the Lessor is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Conditional Sale Agreement, the Accessory Installation Agreement, this Lease and the Assignment hereof to the Vendor; and

B. the Conditional Sale Agreement, the Accessory Installation Agreement, this Lease and the assignment hereof to the Vendor have been duly authorized, executed and delivered by the Lessor and constitute legal and valid agreements binding upon the Lessor and enforceable in accordance with their terms; and

(ii) of the written opinion of counsel for the Builder to the effect that at the time of delivery thereof to the Lessor under the Conditional Sale Agreement, each Unit was free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under this Lease).

In giving the opinions specified in this § 14, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. On the first Closing Date the Lessee agrees to furnish to the Lessor a certificate as to the economic useful life and residual value of the Units subject to this Lease in form and substance satisfactory to the Lessor.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of each Unit, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date

hereof (hereinafter referred to as the Code), to an owner of property, including (without limitation):

(i) the full 7% Investment Credit (as defined in § 9 hereof) allowed by Section 38 and related sections of the Code;

(ii) the Depreciation Deduction (as defined in § 9 hereof) which is or would be available to the Lessor under Section 167 of the Code; and

(iii) the Interest Deduction (as defined in § 9 hereof) in each taxable year of the Lessor for all interest paid during such year on the Conditional Sale Indebtedness.

The Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that it and each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent hereof.

Notwithstanding anything to the contrary contained in § 11 hereof, the Lessee represents and warrants that (i) none of the Units constitutes property of which construction, reconstruction or erection was begun before April 1, 1971; (ii) at the time the Lessor becomes the owner of the Units, the Units will constitute "new section 38 property" within the meaning of Section 48(b) of the Code and at the time the Lessor becomes the owner of the Units, the Units will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with the Lessor; (iii) at all times during the term of this Lease, each Unit will constitute "section 38 property" within the meaning of Section 48(a) of the Code and will be used by railroad companies; and (iv) the Lessee will maintain sufficient records to verify such use. As specified in the definition of "Units" contained in the fourth recital to this Agreement, the terms "Unit" and "Units" include the Accessories.

If for any reason (including the inaccuracy in law or fact of the assumptions set forth above or the repeal, modification, amendment or other change of or to any law or any regulation issued thereunder or any other reason, whether similar or dissimilar to the foregoing (except as a direct result of the occurrence of any Excluded Event set forth below)), the Lessor shall lose or shall not have, or shall lose the right to claim, or shall suffer a

disallowance of or shall be required to recapture all or any portion of the Investment Credit, the Depreciation Deduction or the Interest Deduction (hereinafter each called a Benefit), then the Lessee shall on each rental payment date occurring after written notice to the Lessee by the Lessor that any Benefit has not been claimed or that the Lessor has received from the Internal Revenue Service a notice of deficiency or other advice with respect to the disallowance, inability to claim or recapture of any Benefit, pay to the Lessor increased rentals in an amount which will cause the Lessor's net after tax return in respect of the Units under this Lease to equal the net after tax return that would have been available if the Lessor had been entitled to utilization of all or such portion of the Benefit which was not claimed or was disallowed or required to be recaptured, and the Lessee shall forthwith pay to the Lessor as additional rental the amount of any interest or penalty which may be assessed by the United States of America against the Lessor attributable to the disallowance, recapture or loss of all or any portion of such Benefit; *provided, however*, that such increased rentals and additional rental shall not be payable if the Lessor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of or shall have been required to recapture, all or any portion of any Benefit with respect to all or part of the Units as a direct result of the occurrence of any of the following events (herein called Excluded Events):

(i) a Casualty Occurrence, if the Lessee shall have paid to the Lessor the applicable Casualty Value pursuant to § 6 hereof;

(ii) a transfer or disposition by the Lessor of any interest in the Units (other than by the assignment of this Lease to the Vendor) if such transfer or disposition is made at a time when no Event of Default shall have occurred and be continuing;

(iii) the failure of the Lessor to claim any Benefit in its federal income tax return for the appropriate year, unless such failure occurs after the Lessor shall have requested in writing that the Lessee furnish to the Lessor a written opinion of independent tax counsel (reasonably satisfactory to the Lessor) to the effect that the Lessor has a bona fide claim to such Benefit and the Lessee shall have failed to furnish such opinion of counsel to the Lessor within 30 days after such request;

(iv) the failure of the Lessor to follow proper procedure in claiming any Benefit (but for this purpose any procedure approved in

writing by the Lessee within 30 days after written notice from the Lessor shall in any event be deemed a proper procedure); or

(v) the failure of the Lessor to have sufficient liability or tax against which to credit the Investment Credit or sufficient income to benefit from the Depreciation Deduction and the Interest Deduction as applicable.

The Lessor agrees that if, in the opinion of its or the Lessee's independent tax counsel (herein referred to as Counsel), a bona fide claim to all or a portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit exists in respect of which the Lessee would otherwise be required to pay to the Lessor pursuant to the immediately preceding paragraph increased rental and additional rental in respect of any interest and/or penalty, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by either Counsel in order to sustain such claim; *provided, however,* that the Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested. The Lessor may, at its option, take such action prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to the Lessor of all or any portion of the Depreciation Deduction, the Investment Credit or the Interest Deduction on any Unit (hereinafter called a Tax Payment) or may make such Tax Payment and then sue for a refund. If the Lessor takes such action prior to making such Tax Payment, such increased rental and additional rental need not be paid by the Lessee while such action is pending. In such case, if the final determination shall be adverse to the Lessor, the increased rental shall be computed by the Lessor as of the date of such final determination and the Lessee shall commence payment thereof on the rental payment date next succeeding such final determination and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor in respect of such final determination, together with interest thereon from the date such payment is made by the Lessor to the date the Lessee reimburses the Lessor thereof at the prime rate of The Chase Manhattan Bank, National Association (hereinafter called the Prime Rate) in effect on the date of such final

determination. If the Lessor makes such Tax Payment and then sues for a refund such increased rental shall commence to be payable by the Lessee on the first rental payment date after such Tax Payment is made and, on or before such rental payment date, the Lessee shall pay to the Lessor as additional rental an amount equal to all interest and penalty paid by the Lessor included in such Tax Payment. In such case, if the final determination shall be in favor of the Lessor, the rental payable by the Lessee to the Lessor shall be reduced to the rental rate that would have been in effect if such increase had not been made (or such reduction shall be made proportionately if the final determination is partly in favor of and partly adverse to the Lessor) and such reduced rental shall be payable by the Lessee on the rental payment date next succeeding such final determination and thereafter. In addition, the Lessee and the Lessor shall adjust their accounts so that (a) the Lessor pays to the Lessee (x) an amount equal to the increase in rentals therefore paid by the Lessee to the Lessor (or a proportionate part thereof if the final determination is partly in favor of and partly adverse to the Lessor) on or before such next succeeding rental payment date together with interest thereon at the Prime Rate for the period such increase in rentals was paid to the Lessor to the date the Lessor pays to the Lessee an amount equal to such increase and (y) the amount of any penalty or interest refunded to the Lessor as a result of such final determination and any interest paid to the Lessor by the government on such refund, promptly upon receipt thereof and (b) the Lessee pays to the Lessor an amount equal to interest at the Prime Rate on the amount of the tax refund made in respect of the Tax Payment (excluding any interest or penalty included therein) for the period from the date of the original payment of the Tax Payment by the Lessor to the date such tax refund is received by the Lessor, such Prime Rate to be calculated in either case as from time to time in effect during the respective periods.

In the event that any payment or adjustment is required to be made pursuant to the two immediately preceding paragraphs and such payment or adjustment is to be made on succeeding rental payment dates or on or before the next succeeding rental payment date, but at such time this Lease shall have been terminated or rent shall otherwise no longer be due and payable on the remaining rental payment dates, (a) the Lessee shall promptly pay the Lessor an amount, if any, otherwise payable and not theretofore paid by it, equal to the incremental increase in rent which would have been required if the earlier of the final determination and the Tax

Payment had occurred immediately prior to the last rental payment date on or prior to the termination of this Lease and (b) each party required to make payment shall promptly pay all amounts otherwise payable and not theretofore paid by it in respect of interest and penalty (and interest thereon) and previously paid increments of rent calculated by reference to the actual applicable dates of final determination, Tax Payment and reimbursements pursuant to the immediately preceding paragraph.

The Lessee's and the Lessor's agreements to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

§ 16. *Mileage Allowance; Subrogation.* Provided the Lessee is not in default hereunder, the Lessee shall be entitled to (i) all mileage allowances and other moneys payable by reason of the use of the Units, and any such mileage allowances or other moneys received by the Lessor shall be forthwith remitted to the Lessee, and (ii) the proceeds of any claim or right of the Lessor or the Lessee against third persons for injury, damage or loss with respect to any Unit or the use or operation thereof, including settlements pursuant to the rules of the Association of American Railroads, to the extent of the Lessee's interest therein or the actual expense of repair of a Unit not suffering a Casualty Occurrence paid by the Lessee, as set forth in a certificate of the Treasurer or Chief Accounting Officer of the Lessee, and the Lessee shall be subrogated to the extent of the Lessee's interest to all the Lessor's rights of recovery therefor against any other person, firm or corporation. The Lessor hereby authorizes the Lessee to make settlement of, receive payment and receipt for any and all such claims on behalf of the Lessor, and the Lessor agrees to execute and deliver from time to time such instruments and do such other acts and things as may be necessary or appropriate more fully to evidence the Lessee's authority and/or to vest in the Lessee such proceeds to the extent of the Lessee's interest therein or to effect such subrogation; and in the event of any loss, damage or destruction in respect of which the Lessee is entitled to proceeds or subrogation as aforesaid, the Lessor shall refrain from doing any act or executing any instrument which would prejudice the right of the Lessee to such proceeds or to such subrogation.

§ 17. *Additional Covenants and Guaranty of the Lessee.* As an inducement to the Vendor to enter into the assignment of the Conditional Sale Agreement and as an inducement to the Lessor to enter into this Lease,

the Lessee unconditionally guarantees to the Vendor, and covenants with the Lessor to guarantee unconditionally to the Vendor, the due and punctual performance of all obligations of the Lessor and the due and punctual payment of any and all sums payable by the Lessor under the Conditional Sale Agreement including, but not limited to, that portion of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) payable pursuant to subparagraph (b) of the third paragraph of Article 3 thereof (except for the obligations of the Lessor to make payment of the sums payable by the Lessor pursuant to (i) the fifth paragraph and subparagraph (a) of the third paragraph of Article 3 and (ii) Article 19 thereof) when due, whether at stated maturity or by declaration or otherwise, and in case any such payments or obligations are not so made or performed, the Lessee agrees punctually to pay or perform the same, irrespective of any enforcement against the Lessor of any of the rights of the Vendor under the Conditional Sale Agreement; *provided, however*, that there shall be no obligation upon the Lessee to make the payments or perform the obligations aforementioned in this § 17 while or for so long as the Lessee shall not be in default under this Lease. The Lessee hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of this Lease or the Conditional Sale Agreement or any other conduct of the Lessor, the Vendor and/or the Lessee which might otherwise constitute a legal or equitable discharge of a surety or guarantor, and irrespective of the last paragraph of Article 3 of the Conditional Sale Agreement or any other circumstances which might limit the recourse of the Vendor to the Lessor or of the Lessor or the Vendor to the Lessee. The Lessee hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor or the Vendor of any of their respective rights hereunder and no action by the Lessor or the Vendor to enforce any of their respective rights or failure to take, or delay in taking, any such action shall affect the obligations of the Lessee hereunder or under the Conditional Sale Agreement.

It is understood and agreed between the Lessor and the Lessee that any and all sums paid by the Lessee pursuant to the guaranteed obligations aforementioned in this § 17 shall be thereupon deemed to have been received and paid in reduction or satisfaction, to the extent thereof, of any amount then due or payable by the Lessee to the Lessor under this Lease.

Subject to the foregoing, in the event that the Lessee shall make any payments to the Vendor under the Conditional Sale Agreement on account of its guaranty hereunder, the Lessee hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Lessor or with respect to any of the Units by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Lessee; *provided, however*, that after the payment by the Lessee to the Vendor under the Conditional Sale Agreement of all sums payable by the Lessor under the Conditional Sale Agreement, the Lessee shall, by subrogation, be entitled to the rights of the Vendor under the Conditional Sale Agreement against the Lessor by reason of any such payment made by it pursuant to this § 17, to the extent, but only to the extent, that the Lessor had received "income and proceeds from the Equipment" (as defined in Article 3 of the Conditional Sale Agreement) and has not applied such income and proceeds to the payment, in accordance with the Conditional Sale Agreement, of sums payable by the Lessor to the Vendor under the Conditional Sale Agreement.

§ 18. *Recording; Expenses.* The Lessor will, at the expense of the Lessor, cause this Lease, any assignment hereof and the Accessory Installation Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited in the office of the Registrar General of Canada; and the Lessor will, at the expense of the Lessor, cause the required notice of such deposit forthwith thereafter to be published in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada.

The Lessee will, from time to time and at its expense, do and perform any act and will execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by the Lessor for the purpose of proper protection, to the satisfaction of the Lessor and its counsel, of the Vendor's and the Lessor's respective interests hereunder in the Units, or for the purpose of carrying out the intention of this Lease and any assignment hereof. The Lessee will promptly furnish to the Vendor and the Lessor evidence of such execution, acknowledgment and delivery.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each, respectively, bear the fees and disbursements of any counsel which it may respectively retain.

§ 19. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 10.7% per annum of the amount of the overdue rentals for the period of time during which they are overdue.

§ 20. *Notices.* Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

if to the Lessor, at 79 South Main Street, Salt Lake City, Utah 84111, attention: Trust Department, Robert Clark, Trust New Business Officer with a copy to Itel Leasing Corporation, One Embarcadero Center, San Francisco, California 94111, attention: Contracts Administration Department;

if to the Lessee, 131 West Lafayette Boulevard, Detroit, Michigan 48226, attention of the Secretary, with a copy to Canadian National Railway Company, P. O. Box 8100, Montreal, Quebec, Canada H3C 3N4, attention of the Treasurer;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in a written notice complying with this §20.

§ 21. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the parties hereto and of any party to which this Lease may be assigned.

§ 22. *Execution.* This Lease may be executed in several counterparts and such counterparts together shall constitute but one and the same instrument. The counterpart or counterparts delivered to the Vendor pursuant to an assignment of this Lease shall be marked and be the "original" and all other counterparts shall be marked and be "duplicates" thereof.

Although this Lease is dated as of June 15, 1974, for convenience, 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.

§ 23. *Receipt of Documents.* The Lessee hereby acknowledges that it has received copies of the Conditional Sale Agreement, the assignments hereof and thereof to the Vendor and is fully aware of all the terms and conditions of each such agreement.

§ 24. *Law Governing.* This Lease shall be construed in accordance with the laws of the State of Michigan.

§ 25. *Lessor Acting as Trustee.* The representations, undertakings and agreements herein made on the part of the Lessor are made not in its individual capacity but solely as Trustee and intended for the purpose of binding only the Trust Estate as such term is used in the trust agreement pursuant to which the Lessor is acting as trustee.

Whenever the term Lessor is used in this Lease it shall apply and refer to the Lessor and the Beneficiary and any assignee of the Lessor and the Beneficiary and, where the context so requires (including, but not limited to, certain of the provisions of Sections 5, 9 and 15 hereof), shall refer only to the Beneficiary. For the purpose of computing the net return or the tax obligations of the Beneficiary herein, the term Beneficiary as used herein shall include any affiliated group of corporations which includes the Beneficiary and which files a consolidated Federal income tax return.

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

FIRST SECURITY BANK OF UTAH, N.A.,  
AS OWNER-TRUSTEE

By

*Authorized Officer*

[CORPORATE SEAL]

Attest:

*Authorized Officer*

GRAND TRUNK WESTERN RAILROAD  
COMPANY

By

*Vice President*

[CORPORATE SEAL]

Attest:

*Secretary*

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association 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 national association.

Notary Public

[NOTARIAL SEAL]  
My Commission expires \_\_\_\_\_

STATE OF MICHIGAN }  
COUNTY OF WAYNE } ss.:

On this \_\_\_\_\_, \_\_\_\_\_, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK WESTERN RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

Notary Public,  
Wayne County, Mich.

[NOTARIAL SEAL]  
My Commission expires \_\_\_\_\_

## SCHEDULE A

<u>Description</u>	<u>Manufacturer and Manufacturer's Plant</u>	<u>Quantity</u>	<u>Road Numbers (inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
70-ton 50' 6" Box cars ..... AAR Class XL	Whittaker Corporation, Ber- wick Forge and Fabric- ating Division, Berwick, Pennsylvania	100	GTW309300 to 309399	\$21,635.50	\$2,163,550.00
Accessories will consist of inte- rior load restraining equip- ment .....	Evans Products Company at Plymouth, Michigan	100	—	\$ 1,676.00	\$ 167,600.00
DF-2-Belt Rails				\$23,311.50	\$2,331,150.00

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**AGREEMENT AND ASSIGNMENT**

**Dated as of June 15, 1974**

**between**

**WHITTAKER CORPORATION,  
BERWICK FORGE AND FABRICATING DIVISION**

**and**

**TRUST COMPANY OF GEORGIA,  
*as Agent***

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**AGREEMENT AND ASSIGNMENT** dated as of June 15, 1974, between WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION (hereinafter called the Builder), and TRUST COMPANY OF GEORGIA acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), said Agent, so acting, being hereinafter called the Assignee.

WHEREAS the Builder and First Security Bank of Utah, N.A. (hereinafter called the Vendee), not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns (hereinafter called the Beneficiary) have entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS the Vendee and the Grand Trunk Western Railroad Company (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of June 15, 1974 (hereinafter called the Lease), providing for the lease to the Lessee of the Equipment, and the Vendee and Assignee have entered into a Collateral Assignment of the Lease and Agreement dated as of June 15, 1974 (hereinafter called the Lease Assignment), providing for the assignment of the Lease to the Assignee.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto agree as follows:

**SECTION 1.** The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, security title and interest of the Builder in and to each unit of the Equipment;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 3 thereof, and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) Except as limited by subparagraph (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however*, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 1, 2, 3, 5, 7 and 13 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements

on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease (as defined in the Conditional Sale Agreement); and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however*, to the provisions of the Conditional Sale Agreement and the rights of the Vendee and the Lessee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Article 18 of the Conditional Sale Agreement (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee or from the Lessee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense,

setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee 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, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of Equipment, at the

time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"TRUST COMPANY OF GEORGIA  
25 PRYOR STREET, ATLANTA GEORGIA 30302  
AGENT—SECURITY OWNER."

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 3, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 14 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee and the Vendee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 2 of the Conditional Sale Agreement and § 2 of the Lease;

(c) A certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) An invoice of the Builder addressed to the Assignee and the Vendee for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment, the Lease and the Lease Assignment have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instruments, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment is validly vested in the Assignee and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as

amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or such Investors;

(f) An opinion of counsel for the Vendee, dated as of such Closing Date, stating that the Conditional Sale Agreement, the Lease and the Lease Assignment to the Assignee have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(g) Opinions of counsel specified in §14 of the Lease;

(h) An opinion of Messrs. McCarthy & McCarthy, who are acting as special Canadian counsel for the Assignee, addressed to the Assignee and the Lessee, dated as of the Closing Date stating that (i) the Conditional Sale Agreement and this Assignment have been deposited in the office of the Registrar General of Canada and counterparts of such documents have been duly filed in the office of the Minister of Financial and Commercial Affairs of Ontario, and upon publication of notice of such deposit (which has been effected or in respect of which due provision has been made) in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) no further act, filing, recording or deposit (or giving of notice) is required in order fully to protect the rights hereunder of the Assignee in the Conditional Sale Agreement and the Equipment then being settled for in the Province of Ontario, Canada against any and all subsequent purchasers and mortgagees and from creditors of the Vendee and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada and upon publication of notice of such deposit (which has been effected or in respect of which due provisions has been made) in *The Canada Gazette* in accordance with Section 86 of the Railway Act of Canada (1970-RSC) no other act, filing, recording or deposit (or giving of notice) in respect of the Lease is necessary in order to protect the interests thereunder of the Vendee and the Assignee in and to the Equipment in Canada, (iii) the Guarantor referred to in the Lease is a corporation legally incorporated and validly existing, in good standing, under the laws of the jurisdiction of its incorporation, with adequate corporate power to enter into the Guaranty Agreement (as defined in the Lease), (iv) the Guaranty

Agreement has been duly authorized, executed and delivered by the Guarantor and constitutes a legal and valid agreement binding upon the Guarantor and enforceable against the Guarantor in accordance with its terms, and (v) no approval is required from any governmental ministry or agency or public regulatory body in Canada with respect to the entering into or performance of the Guaranty Agreement by the Guarantor, or if any such approval is required, such approval has been duly obtained;

(i) An opinion of counsel for the Builder, addressed to the Assignee and the Vendee dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder, assuming due authorization, execution and delivery by the other parties thereto, and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, and (iii) this Assignment has been duly authorized, executed and delivered by the Builder, assuming due authorization, execution and delivery by the other parties thereto, and is a legal and valid instrument binding upon the Builder; and

(j) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 5) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Vendee.

In giving the opinions specified in subparagraphs (e), (f), (g), (h) and (i) of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents

executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, (ii) as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder, the Lessee or the Vendee as to such matter, (iii) as to the due authorization, execution and delivery by the Vendee of the documents executed by the Vendee, on the opinion of counsel for the Vendee and (iv) as to the due authorization, execution and delivery by the Lessee of the documents executed by the Lessee, on the opinion of counsel for the Lessee.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 3 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time after the commencement of any proceedings specified in clause D or E of §9 of the Lease or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee or the Lessee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it

and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee and the Lessee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Utah, *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, the applicable recording laws of Canada and of the Provinces and Territories thereof and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

SECTION 9. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of June 15, 1974, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officials, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.



[CORPORATE SEAL]

WHITTAKER CORPORATION,  
BERWICK FORGE AND  
FABRICATING DIVISION

by *James J. ...*  
*Authorized Signatory*

Attest:

*Howard E. ...*  
*Authorized Signatory*

TRUST COMPANY OF GEORGIA,  
as Agent,

by *R. M. Beck*  
*Corporate Trust Officer*

Attest:

*[Signature]*  
*Authorized Officer*

COMMONWEALTH OF PENNSYLVANIA }  
COUNTY OF COLUMBIA } ss.:

On this *27<sup>th</sup>* day of *September, 1974*, before me personally appeared *James J. Malatras*, to me personally known, who, being by me duly sworn, says that he is an Authorized Signatory of WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission expires:

Notary Public  
*Lloyd H. Adams*  
LOYD H. ADAMS, NOTARY PUBLIC  
BERWICK BOROUGH, COLUMBIA COUNTY  
MY COMMISSION EXPIRES SEPT. 19, 1978  
Member, Pennsylvania Association of Notaries

STATE OF GEORGIA }  
COUNTY OF *Fulton* } ss.:

On this *9<sup>th</sup>* of *Sept 1974*, before me personally appeared *R. M. Bell*, to me personally known, who, being by me duly sworn, says that he is a Corporate Trust Officer of TRUST COMPANY OF GEORGIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company 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 trust company.

[NOTARIAL SEAL]

My Commission expires:

Notary Public  
*Brenda Burrell*

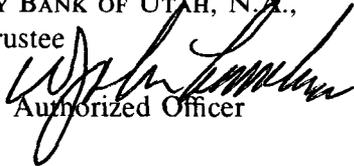
NOTARY PUBLIC, GEORGIA STATE AT LARGE  
MY COMMISSION EXPIRES NOVEMBER 1, 1977

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of June 15, 1974.

FIRST SECURITY BANK OF UTAH, N.A.,  
as Owner-Trustee

by

  
Authorized Officer

## EXHIBIT C

**COLLATERAL ASSIGNMENT OF LEASE AND AGREEMENT** dated as of June 15, 1974 (hereinafter called "this Assignment"), by and between **FIRST SECURITY BANK OF UTAH, N.A.** (hereinafter called the Company) not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns, and **TRUST COMPANY OF GEORGIA**, acting as Agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), among the Agent and the Investors referred to therein (hereinafter called the Investors).

WHEREAS the Company has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter called the Builder), providing for the sale to the Company of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Company thereunder; and

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Agent, acting under the Finance Agreement, pursuant to an Agreement and Assignment dated as of June 15, 1974; and

WHEREAS the Company and **GRAND TRUNK WESTERN RAILROAD COMPANY** (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of June 15, 1974 (hereinafter called the Lease), providing for the leasing by the Company to the Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of the Company under the Conditional Sale Agreement and as an inducement to the Investors to invest in the Conditional Sale Indebtedness (as that term is defined in the Conditional Sale Agreement), the Company has agreed to assign for security purposes its rights in, to and under the Lease to the Agent;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Subject to the provisions of Paragraph 13 hereof, the Company hereby assigns, transfers and sets over unto the Agent, as collateral security for the payment and performance of the Company's obligations under the Conditional Sale Agreement, all the Company's right, title and interest as Lessor under the Lease, together with all rights, powers, privileges, and other benefits of the Company as Lessor under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Company from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, payments with respect to the guarantee of the Conditional Sale Agreement by the Lessee provided for in § 17 of the Lease or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Company, as Lessor, is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Company hereby irrevocably authorizes and empowers the Agent in its own name, or the name of its nominee, or in the name of the Company or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Company is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Agent agrees to accept any Payments made by the Lessee for the account of the Company pursuant to the Lease. To the extent received, the Agent will apply such Payments to satisfy the obligations of the Company under the Conditional Sale Agreement. So long as no event of default (or event which, with notice or lapse of time, or both, could constitute an event of default) under the Conditional Sale Agreement shall have occurred and be continuing, any balance shall be paid to the Company or to the order of the Company at such address as the Company shall furnish the Agent in writing. The Agent will promptly notify the Company of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under the Conditional Sale Agreement.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Agent to, or transfer, or pass, or in any way affect or modify the liability of the Company under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Company to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Company or persons other than the Agent.

3. To protect the security afforded by this Assignment the Company agrees as follows (subject to the limitations set forth in Article 3 and in the last paragraph of Article 22 of the Conditional Sale Agreement):

(a) The Company will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Company; without the written consent of the Agent, the Company will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Company agrees that any amendment, modification or termination thereof without such consent shall be void; the Company will hold all Payments received by the Company which are assigned and set over to the Agent by this Assignment in trust for the Agent and will turn them over to the Agent forthwith in the same form in which they are received for application in accordance with the terms and conditions hereof.

(b) At the Company's sole cost and expense, the Company will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Company under the Lease.

(c) Should the Company fail to make any payment or to do any act which this Assignment requires the Company to make or do, then the Agent, but without obligation so to do, after first making written demand upon the Company and affording the Company a reasonable period of time within which to make such payment or do such act, but

without releasing the Company from any obligation hereunder, may make or do the same in such manner and to such extent as the Agent may deem necessary to protect the security hereof, including specifically, without limiting its general powers, the right to appear in and defend any action or proceeding purporting to affect the security hereof and the rights or powers of the Agent, and also the right to perform and discharge each and every obligation, covenant and agreement of the Company contained in the Lease; and in exercising any such powers, the Agent may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees.

4. The Company does hereby constitute the Agent the Company's true and lawful attorney, irrevocably, with full power (in the name of the Company, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Company is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to the Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all the Company's obligation under the Conditional Sale Agreement, this Assignment and all rights and powers herein assigned and granted to the Agent shall terminate, and all estate, right, title and interest of the Agent in and to the Lease shall revert to the Company.

6. The Company represents and warrants that (a) the execution and delivery by the Company of the Lease, this Assignment and the Conditional Sale Agreement have each been duly authorized, and the Lease, this Assignment and the Conditional Sale Agreement are and will remain the valid and binding obligations of the Company in accordance with their terms; (b) the Company has not executed any other assignment of the Lease and the Agent's right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, agreements, security interests or other encumbrances, created by the Company (c) notwithstanding this Assignment, the Company will conform and comply with each and all of the covenants and conditions in the Lease and the Conditional Sale

Agreement set forth to be complied with by it, (d) to the knowledge of the Company, it has performed all obligations on its part to be performed under the Lease and the Conditional Sale Agreement as of the date hereof and (e) the Lease and the Conditional Sale Agreement have not been canceled by the Company and to the knowledge of the Company are in full force and effect and to the knowledge of the Company there has not occurred on or prior to the date hereof any event of default under the Conditional Sale Agreement or any event which with notice and/or lapse of time would constitute such an event of default.

If an event of default under the Conditional Sale Agreement shall occur and be continuing, the Agent may declare all sums secured hereby immediately due and payable and may at its option without notice and without regard to the adequacy of the security of the sums hereby secured, either in person or by an agent, take possession of and operate the Units or any part thereof in accordance with the terms of the Conditional Sale Agreement and do any acts which the Agent deems proper to protect the security hereof, either with or without taking possession of the Units. The taking possession of the Units and the taking of any action permitted as aforesaid shall not cure or waive any default or waive, modify or affect any default hereunder or under the Lease or invalidate any act done hereunder.

7. Subject to the limitations set forth in Article 3 and in the last paragraph of Article 22 of the Conditional Sale Agreement, the Company covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent, as assignee of the Company's right, title and interest under the Lease for any instalment of, or interest on, any rental or other sum owing thereunder, or to enforce any provisions of the Lease, the Company will save, indemnify and keep the Agent harmless from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Lessee or its successors, arising out of a breach by the Company of any obligation under the Lease or arising out of any other indebtedness or liability at any time owing to the Lessee or its successors from the Company. Any and all such obligations of the Company shall be and remain enforceable against and only against the Company and shall not be enforceable against the Agent or any party or parties in whom any of the rights of the Company under the Lease shall vest by reason of successive assignments or transfers.

8. The Company will, from time to time, execute, acknowledge and deliver for filing, registry, deposit and recordation any and all further instruments reasonably requested by the Agent in order to confirm or further assure, to the satisfaction of the Agent and its counsel, this Assignment and the provisions hereof under Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada, as such Sections have been or shall be amended.

9. The Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Agent hereunder.

10. This Assignment shall be governed by the laws of the State of Utah, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

11. The Company shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Agent. Any notice required or permitted to be given by either party hereto to the other party shall be given (i) if to the Company, in accordance with §20 of the Lease and (ii) if to the Agent, in accordance with Article 21 of the Conditional Sale Agreement, at its office at 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham.

12. The Company will promptly cause this Assignment to be filed and recorded in accordance with § 18 of the Lease.

13. Anything herein or in the Lease or in the Conditional Sale Agreement (or either of them) contained to the contrary notwithstanding:

(a) The Company may, but shall be under no obligation to, cure any Event of Default (as Event of Default is defined in § 9 of the Lease) suffered or permitted to occur by the Lessee under the Lease by making any payment (whether of rent, casualty payment, indemnity payment or other payment) or by performing any act which the Lease requires the Lessee to make or perform. Upon the making of any such payment or the

performance of any such act by the Company, the Event of Default under the Lease or any event of default under the Conditional Sale Agreement (or either of them) which occurred in consequence of the Lessee's having failed to make such payment or to perform such act, shall for all purposes of both the Lease and the Conditional Sale Agreement be deemed, as between the Company and the Agent, to have been cured to the same extent as if the Lessee had made such payment or performed such act. The curing of any Event of Default by the Company shall not be deemed to impose any obligation or liability upon the Company to cure any subsequent Event of Default suffered or permitted to occur by the Lessee.

(b) The Agent for itself and its successors and assigns, hereby agrees with the Company and its successors and assigns, that, except for the direct collection by the Agent of all rentals, profits and other sums payable by the Lessee to the Company pursuant to the Lease and the application thereof as provided in paragraph 1 hereof, the Agent will not, so long as no Event of Default under the Lease or event of default under the Conditional Sale Agreement (or either of them) has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Company to the Agent by this Assignment.

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

FIRST SECURITY BANK OF UTAH, N.A.,  
as Owner-Trustee

[ CORPORATE SEAL ]

By  
Authorized Officer

Attest:

Authorized Officer

TRUST COMPANY OF GEORGIA,  
*as agent*

[ CORPORATE SEAL ]

By  
Corporate Trust Officer

Attest:

Assistant Secretary

STATE OF GEORGIA }  
COUNTY OF } ss.:

On this day of 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Corporate Trust Officer of TRUST COMPANY OF GEORGIA, that the seal affixed to the foregoing instrument is the corporate seal of said trust company, that said instrument was signed and sealed on behalf of said trust company 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 trust company.

Notary Public

[NOTARIAL SEAL]  
My Commission expires

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this day of 1974, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association 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 national association.

Notary Public

[NOTARIAL SEAL]  
My Commission expires

## LESSEE'S CONSENT AND AGREEMENT

The undersigned, GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan corporation (hereinafter called the Lessee), the lessee named in the Lease (hereinafter called the Lease) referred to in the foregoing Collateral Assignment of Lease and Agreement dated as of June 15, 1974 (hereinafter called the Assignment), hereby (a) acknowledges receipt of a copy of the Assignment of Lease and Agreement and (b) consents to all the terms and conditions of the Assignment.

As an inducement to the Investor, a party to the Finance Agreement (a copy of which has been delivered to the Lessee) referred to in the Assignment, to invest in the Conditional Sale Indebtedness, as that term is defined in the Conditional Sale Agreement referred to in the Assignment, pursuant to which FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 (hereinafter called the Trust Agreement) with First Security Leasing Company or its successors and assigns (hereinafter called the Beneficiary) is financing its purchase of the units of railroad equipment (hereinafter called the Units), which Units the Lessor is leasing to the Lessee pursuant to the Lease, and in consideration of other good and valuable consideration, the Lessee agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease (which moneys are hereinafter called the Payments) due and to become due under the Lease or otherwise in respect of the Units leased thereunder, directly to the Agent, the assignee named in the Assignment, at 25 Pryor Street, Atlanta, Georgia 30302, Attention of J. William Ham (or at such other address as may be furnished in writing to the Lessee by the Agent) and, if the Lessee fails for any reason whatsoever to pay to the Agent any Payments, it will pay to the Agent on the respective dates or times set forth in the Lease, amounts equal to the Payments which it shall not theretofore have paid to the Agent; it being hereby agreed that the obligation of the Lessee to pay all the aforesaid Payments or sums equivalent to the Payments is absolute and unconditional;

(2) the Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessee under the Lease as though the Agent were named therein as the Lessor;

(3) the Payments or sums equivalent to the payments due hereunder shall not be subject to any right of setoff or counterclaim or other defense which the Lessee might have against the Lessor or otherwise, and the payment thereof to the Agent shall be final and shall not be subject to, and the Lessee hereby agrees to indemnify the Agent against, any liens, charges, security interests or claims of any nature whatsoever resulting from a breach by the Lessee of its obligations under the Lease, prior to or *pari passu* with the right of the Agent to apply such payments or sums equivalent thereto, as provided in the Assignment;

(4) the Agent shall not, by virtue of the Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(5) the Lease shall not, without the prior written consent of the Agent, be terminated or modified, or any action be taken or omitted by the Lessee, the taking or omission of which might result in an alteration or impairment of the Lease or the Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Agent by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of Michigan and, for all purposes, shall be construed in accordance with the laws of said State.

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

[ CORPORATE SEAL ]

By

Vice President

Attest:

Secretary



**EXHIBIT D**

**GUARANTY AGREEMENT**

**GUARANTY AGREEMENT** dated as of June 15, 1974, among **CANADIAN NATIONAL RAILWAY COMPANY**, a corporation duly incorporated under the laws of Canada (hereinafter called the Guarantor), **FIRST SECURITY BANK OF UTAH, N.A.** (hereinafter called the Lessor), and **TRUST COMPANY OF GEORGIA**, acting as agent (hereinafter called the Agent) pursuant to a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), between the Agent and the investor referred to therein (hereinafter called the Investor).

WHEREAS the Lessor has entered into a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), with Whittaker Corporation, Berwick Forge and Fabricating Division (hereinafter called the Builder), providing for the sale to the Lessor of such units of railroad equipment (hereinafter called the Units) described in Annex B to the Conditional Sale Agreement as are delivered to and accepted by the Lessor thereunder;

WHEREAS the Builder has assigned its interests in the Conditional Sale Agreement to the Agent, acting under the Finance Agreement, pursuant to an Agreement and Assignment dated as of June 15, 1974 (hereinafter called the Assignment);

WHEREAS the Lessor and Grand Trunk Western Railroad Company (hereinafter called the Lessee), a wholly-owned subsidiary of the Guarantor, have entered into a Lease of Railroad Equipment dated as of June 15, 1974 (hereinafter called the Lease), providing for the leasing by the Lessor to the Lessee of the Units and pursuant to which the Lessee guarantees payment of certain sums payable by the Lessor under the Conditional Sale Agreement;

WHEREAS the Lessor has assigned the Lease to the Agent pursuant to a Collateral Assignment of Lease and Agreement dated as of June 15, 1974 (hereinafter called the Collateral Assignment), by and between the Lessor and the Agent, and the Lessee has consented to the assignment of the Lease to the Agent by execution of a Lessee's Consent and Agreement dated as of

June 15, 1974 (hereinafter called the Consent), and in connection with such Consent has agreed to pay to the Agent the Payments (as defined in the Consent) or amounts equal to the Payments;

WHEREAS as an inducement to the Lessor to enter into the Lease with the Lessee and to lease the Units, or any of them, to the Lessee and as an inducement to the Investor, party to the Finance Agreement (a copy of which has been delivered to the Guarantor), to invest in the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) pursuant to which the Lessor is financing its purchase of the Units, the Guarantor has agreed to guarantee as hereinafter provided, subject to receipt of the approval of The Governor General in Council, all obligations and covenants of the Lessee under the Lease and the Consent, including the guaranty of the Lessee mentioned in the third paragraph of this preamble; and

WHEREAS the approval of The Governor General in Council to the guaranty hereinafter set out has been received;

NOW, THEREFORE, in consideration of the premises and the execution and delivery of the Lease and the Finance Agreement and of other good and valuable consideration and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. The Guarantor hereby unconditionally guarantees to the Lessor and the Agent the due and punctual payment by the Lessee of all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease, including, without limitation, payments under and by virtue of the guaranty set forth in § 17 of the Lease, due and to be due under the Lease or otherwise in respect of the Units thereunder, and to the Agent the due and punctual payment of all Payments or amounts equivalent to the Payments provided for in the Consent, due and to become due under the Consent, and to the Lessor and the Agent the due and punctual performance of all obligations of the Lessee under the Lease.

2. The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever) irrespective of the genuineness, validity, regularity or enforceability of the Lease, the Consent or this Agreement or any conduct of the Lessee and/or the Lessor, which might constitute a legal or equitable discharge of a surety or guarantor and irrespective of any

circumstances which might limit the recourse of the Agent or the Lessor to the Lessee. The Guarantor hereby waives diligence, presentment, demand for payment, notice of dishonor and protest. No waiver by the Lessor of any of its rights hereunder or under the Lease and no action by the Lessor to enforce any of its rights hereunder or under the Lease or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

3. The Guarantor hereby acknowledges that it has received copies of the Lease, the Conditional Sale Agreement, the Assignment, the Accessory Installation Agreement (as defined in the Lease) the Collateral Assignment and the Consent and is fully aware of all the terms and conditions of each such agreement.

4. This Agreement shall in all respects be governed by and construed in accordance with the laws of the Province of Ontario.

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

CANADIAN NATIONAL RAILWAY COMPANY,

By

Vice President

[ CORPORATE SEAL ]

Attest:

Assistant Secretary

FIRST SECURITY BANK OF UTAH, N.A.,

By

Authorized Officer

[ CORPORATE SEAL ]

Attest:

Authorized Officer

TRUST COMPANY OF GEORGIA,

*as agent,*

By

Corporate Trust Officer

[ CORPORATE SEAL ]

Attest:

Assistant Secretary

PROVINCE OF QUEBEC }  
CITY OF MONTREAL } ss.:

On this        day of        , 1974, before me personally appeared        , to me personally known, who, being by me duly sworn, says that he is a Vice President of CANADIAN NATIONAL RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Commissaire à l'Assermentation  
District—Montreal

STATE OF GEORGIA }  
COUNTY OF        } ss.:

On this        day of        , 1974, before me personally appeared        , to me personally known, who, being by me duly sworn, says that he is a Corporate Trust Officer of TRUST COMPANY OF GEORGIA, that one of the seals affixed to the foregoing instrument is the corporate seal of said trust company, and that said instrument was signed and sealed on behalf of said trust company, 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 trust company.

Notary Public

[NOTARIAL SEAL]

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this        day of        ,        , before me personally appeared        , to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A., that one of the seals affixed to the foregoing instrument is the corporate seal of said national association and that said instrument was signed and sealed on behalf of said national association 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 national association.

Notary Public

[NOTARIAL SEAL]  
My Commission Expires

## EXHIBIT E

### CERTIFICATE OF INTEREST

TRUST COMPANY OF GEORGIA (hereinafter called the Agent) hereby acknowledges receipt from

(hereinafter called the Investor) of

such sum having been paid by the Investor under and pursuant to the terms and conditions of a Finance Agreement dated as of June 15, 1974 (hereinafter called the Finance Agreement), among the Agent and the Investor. By reason of such payment the Investor has an interest in a principal amount equal to such sum (i) in a Conditional Sale Agreement dated as of June 15, 1974 (hereinafter called the Conditional Sale Agreement), between FIRST SECURITY BANK OF UTAH, N.A. as Owner-Trustee under a Trust Agreement dated as of June 15, 1974 with First Security Leasing Company or its successors and assigns, (hereinafter called the Company) and WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION, (hereinafter sometimes called the Builder), (ii) in an Agreement and Assignment dated as of June 15, 1974, between the Builder, respectively, and the Agent, (iii) in a Lease of Railroad Equipment dated as of June 15, 1974, between the Company and the Lessee, (iv) in the Collateral Assignment of Lease and Agreement dated as of June 15, 1974, between the Company and the Agent (hereinafter called the Lease Assignment) and in the Lessee's Consent and Agreement annexed thereto executed by Grand Trunk Western Railroad Company, (v) in the Guaranty Agreement dated as of June 15, 1974, among Canadian National Railway Company, the Company and the Agent, (vi) in the right, title and interest of the Agent in and to the Equipment referred to and defined in the Conditional Sale Agreement and (vii) in and to all cash and other property from time to time held by the Agent under the Finance Agreement, except to the extent that instalments of such principal amount shall have been paid.

Under the terms of the Conditional Sale Agreement, subject to the right of prepayment contained therein, (i) such principal amount is repayable by the Company in 27 semiannual instalments on January 15 and July 15 of

each year commencing July 15, 1975, (ii) such principal amount bears interest, payable semiannually on January 15 and July 15 commencing January 15, 1975, on the unpaid portion thereof from time to time outstanding from the date of this certificate until the same shall have become due and payable, at the rate of 9.7% per annum, and (iii) all such principal and interest remaining unpaid after the same shall have become due and payable bears interest at the rate of 10.7% per annum. The Agent has furnished, or promptly will furnish, to the Investor a schedule of payments describing the amounts of principal and interest payments to be made under this certificate of interest and the dates on which such payments shall be made. All payments received by the Agent in accordance with the terms of the Finance Agreement and the Conditional Sale Agreement shall be disbursed by the Agent in accordance with the terms and conditions of the Finance Agreement. The obligations of the Company under the Conditional Sale Agreement are subject to the limitations set forth in Article 3 and in the last paragraph of Article 22 thereof, under the Lease Assignment are subject to the limitations set forth in Paragraph 13 thereof and under the Lease are subject to the limitations set forth in §25 thereof.

Dated

TRUST COMPANY OF GEORGIA, as Agent  
under the Finance Agreement,

By .....  
*Corporate Trust Officer*

IF CERTIFICATION AS TO BALANCE DUE HEREUNDER IS  
REQUIRED INQUIRY SHOULD BE MADE OF THE AGENT.