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RECORDATION NO._____ Filed & Recorded

APR 2 1974 -1 40 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of October 15, 1973

BETWEEN

GREENVILLE STEEL CAR COMPANY

AND

INTER NATIONAL BANK OF MIAMI,

as Agent

AGREEMENT AND ASSIGNMENT dated as of October 15, 1973, between the corporation first signing under the testimonium below (hereinafter called the Builder), and INTER NATIONAL BANK OF MIAMI, as Agent (hereinafter called the Assignee).

WHEREAS the Builder and TRUST COMPANY FOR USL, INC. (hereinafter called the Vendee), as owner trustee under a Trust Agreement dated as of October 15, 1973, with a certain equity investor (hereinafter called the Trust Agreement) have entered into a Conditional Sale Agreement dated as of October 15, 1973 (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 GRAND TRUNK WESTERN RAILROAD COMPANY (hereinafter called the Lessee) have entered into a Lease of Railroad Equipment dated as of October 15, 1973 (hereinafter called the Lease), providing for the leasing by the Vendee to the Lessee of the Equipment, and the Vendee and the Assignee have entered into a Collateral Assignment of Lease and Agreement dated as of October 15, 1973 (hereinafter called the Lease Assignment), providing for the assignment of the Lease to the Assignee;

WHEREAS the Vendee, the Assignee and Canadian National Railway Company (hereinafter called the Guarantor) have entered into a Guaranty Agreement dated as of October 15, 1973 (hereinafter called the Guaranty Agreement), wherein the Guarantor has agreed to guarantee the due and punctual payment of sums payable by, and the due and punctual performance of all other obligations of the Lessee under the Lease;

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.

SECTION 1. *Incorporation of Model Provisions.* Whenever this Assignment incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Assignment Provisions for Non-Guaranteed Lease Transactions" annexed to this Assignment as Annex I (hereinafter called the Model Assignment Provisions), such provision of the Model Assignment Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full herein.

SECTION 2. 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 4 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 contained or referred to in Article 14 of the Conditional Sale Agreement or

relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 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 3. Section 3 of the Model Assignment Provisions is amended by substituting the words "Article 19 of the Conditional Sale Agreement" for the words "Section 20c of the Interstate Commerce Act" in the second sentence thereof. Section 3 of the Model Provisions as so amended is herein incorporated as Section 3 hereof.

SECTION 4. Section 4 of the Model Assignment Provisions is herein incorporated as Section 4 hereof.

SECTION 5. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, at the time of delivery thereof to the Vendee, in letters not less than one inch in height, the following legend:

"INTER NATIONAL BANK OF MIAMI,
AGENT—SECURITY OWNER".

SECTION 6. Section 6 of the Model Assignment Provisions is hereby amended as follows:

(a) deleting subparagraph (e) thereof and inserting in lieu thereof "(e) opinion of counsel for the Vendee or the beneficial owner of the Equipment, dated as of such Closing Date, stating that the Trust

Agreement has been duly authorized, executed and delivered by the parties thereto and is a legal and valid instrument binding upon the parties thereto and enforceable against the parties thereto in accordance with its terms;";

(b) deleting subparagraph (f) thereof and inserting in lieu thereof "(f) Opinions of counsel specified in § 14 of the Lease;";

(c) adding a new sentence following the first sentence of the second paragraph thereof reading as follows: "In giving the opinion specified in subparagraph (d) of this Section 6, counsel may rely on the opinion of counsel for the Vendee as to the due authorization, execution and delivery by the Vendee of the documents executed by the Vendee."; and

(d) adding a new subparagraph (g-1) following subparagraph (g) thereof reading as follows:

> "(g-1) 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 notice of such deposit has been duly published in *The Canada Gazette* in accordance with Section 86 of the Railway Act 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 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 Company and the Lessee, (ii) the Lease and the Lease Assignment have been deposited in the office of the Registrar General of Canada pursuant to Section 86 of Railway Act of Canada and upon the giving of notice of such deposit in *The Canada Gazette* in accordance with said Section 86, 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 Company and the Assignee in and to the Equipment in Canada,

(iii) 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, (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;".

Section 6 of the Model Assignment Provisions, as so amended, is herein incorporated as Section 6 hereof.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee 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 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. Section 8 of the Model Assignment Provisions is herein incorporated as Section 8 hereof.

SECTION 9. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, 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.

SECTION 10. 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 this Assignment is dated as of October 15, 1973, 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, 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.

GREENVILLE STEEL CAR COMPANY

By .....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

INTER NATIONAL BANK OF MIAMI

By .....
Senior Vice President

[CORPORATE SEAL]

Attest:

.....
~~Secretary~~
Vice President and Trust Officer

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF MERCER } SS.:

On this 26th day of March, 1974, before me personally appeared G.C. Brecht, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREEENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Leora Smith
Notary Public

LEORA SMITH Notary Public
GREENVILLE, MERCER COUNTY
My Commission Expires Feb. 21, 1977

My Commission expires:

[NOTARIAL SEAL]

STATE OF FLORIDA
COUNTY OF DADE } SS.:

On this 28 day of February, 1974, before me personally appeared C. J. Barber, Sr., to me personally known, who, being by me duly sworn, says that he is Vice President of INTER NATIONAL BANK OF MIAMI, that one of the seals affixed to the foregoing instrument is the corporate seal of said national banking association, that said instrument was signed and sealed on behalf of said national banking 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 banking association.

Caridad Lopez
Notary Public

[NOTARIAL SEAL]

My Commission expires:

NOTARY PUBLIC STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES SEP. 23, 1977
BONDED THRU GENERAL INSURANCE UNDERWRITERS

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 October 15, 1973.

TRUST COMPANY FOR USL, INC.,
as Owner-Trustee
by .....
Authorized Officer

MODEL ASSIGNMENT PROVISIONS FOR
NON-GUARANTEED LEASE TRANSACTIONS

SECTION 3. 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 will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement or the Lessee under the Lease until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (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 4. 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 (as defined in the Conditional Sale Agreement) 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 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 Vendee or the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or the Lessee and not developed or purported to be developed by the Builder, the Builder agrees 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 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 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to 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 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee) 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 transferring to the Assignee title to the units of the Equipment then being settled for under the Conditional Sale Agreement, 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 as contemplated by Article 3 of the Conditional Sale Agreement and a Certificate or Certificates of Delivery with respect to such units as contemplated by § 2 of the Lease;

(c) An invoice of the Builder addressed to the Assignee for the units of the Equipment accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of 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 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, this Assignment, the Lease or the Lease Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement, this Assignment, the Lease and the Lease 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;

(e) An opinion of counsel for the Vendee or the beneficial owner of the Equipment, dated as of such Closing Date, stating that the Conditional Sale Agreement, the Lease and the Lease Assignment have been duly authorized, executed and delivered by the Vendee and are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms;

(f) An opinion of counsel for the Lessee, dated as of such Closing Date, as specified in § 15 of the Lease;

(g) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) 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 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 and is a legal and valid instrument binding upon the Builder; and

(h) 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 6) 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 this Section 6, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinions specified in said subparagraphs (d) and (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 and (ii) to the extent appropriate, 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 or the opinion of counsel for the Lessee as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Agent 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 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under 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.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, 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.