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INTERSTATE COMMERCE COMMISSION

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RECORDATION NO. ____ Filed 1425
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12640-A
RECORDATION NO. ____ Filed 1425
DEC 22 1980 -12 35 PM
INTERSTATE COMMERCE COMMISSION

December 22, 1980

The Canadian Wheat Board
Lease Financing Dated as of September 15, 1980
[CS&M Ref. 2044-064A]
White Covers

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303(a), I enclose herewith on behalf of The Canadian Wheat Board, for filing and recordation, counterparts of the following:

(1) (a) Conditional Sale Agreement dated as of September 15, 1980, between First Security Bank of Utah, N.A. and National Steel Car Limited; and

(b) Agreement and Assignment dated as of September 15, 1980, between Mercantile-Safe Deposit and Trust Company and National Steel Car Limited.

(2) Lease of Railroad Equipment dated as of September 15, 1980, between The Canadian Wheat Board and First Security Bank of Utah, N.A.

The addresses of the parties to the aforementioned agreements are:

Trustee-Lessor-Vendee:

First Security Bank of Utah, N.A.
79 South Main Street
Salt Lake City, Utah 84111.

Builder-Vendor:

National Steel Car Limited
Post Office Box 450
Hamilton, Ontario L8N 3J4

Lessee:

The Canadian Wheat Board
423 Main Street
Winnipeg, Manitoba R3C 2P5

Agent-Assignee

Mercantile-Safe Deposit and Trust Company
Two Hopkins Plaza,
Baltimore, Maryland 21201

The equipment covered by the aforementioned agreements consists of 275 covered hopper cars bearing the road numbers of the Lessee CPWX605552 through CPWX605826, and also bearing the legend "Owned by a Bank or Trust Company. Ownership Subject to a Conditional Sale Agreement filed with the Interstate Commerce Commission".

Enclosed is our check for $100 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt addressed to the undersigned.

Very truly yours,

Roger D. Turner /EM

Roger D. Turner
As Agent for The Canadian
Wheat Board

Agatha Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

RECORDATION NO. 12640-A Filed 1425

DEC 22 1980 -12 35 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT

Dated as of September 15, 1980

Between

NATIONAL STEEL CAR LIMITED

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent

AGREEMENT AND ASSIGNMENT dated as of September 15, 1980, between NATIONAL STEEL CAR LIMITED (the "Builder") and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, acting as Agent under a Participation Agreement dated as of the date hereof (the "Assignee").

The Builder and First Security Bank of Utah, N.A., as Trustee (the "Vendee"), under a Trust Agreement dated as of the date hereof (the "Trust Agreement"), with the Assignee and First Security Bank of Idaho, N.A., have entered into a Conditional Sale Agreement dated as of the date hereof (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 (the "Equipment").

The Vendee and The Canadian Wheat Board (the "Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the lease to the Lessee of the Equipment.

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (this "Assignment") WITNESSETH: that in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, 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, title and interest of the Builder in and to each unit of the Equipment manufactured by it when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due to the Builder under the Conditional Sale Agreement;

(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, 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 referred to in Article 13 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 of the Conditional Sale Agreement. 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 immediately prior to the time of delivery and acceptance of each unit of Equipment under the Conditional Sale Agreement, it had legal title to such unit and good and lawful right to sell such unit and that such unit was free of all claims, liens, security interests and other encumbrances of any nature arising from, through or under the Builder, except only (i) any claims, liens, security interests or other encumbrances created by any person other than the Builder or any of its affiliates, after such unit has been handed over by the Builder to Canadian National Railway Company ("CNR") at the storage area at the Builder's plant pursuant to the Bailment Agreement dated September 18, 1980, between the Builder and CNR (the "Bailment Agreement"), and (ii) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto; and the Builder further agrees that it will defend such title to such unit against the demands of all persons whomsoever based on claims (other than any thereof referred to in the foregoing clauses (i) and (ii)) arising from, through or under the Builder 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 to the rights of the Vendee 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 with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and as contemplated by Paragraph 7(b) of the Participation Agreement (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings 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 installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment manufactured by it or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, 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 such 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 Vendee or 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 manufactured by the Builder 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 Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount in Canadian dollars equal to the portion of the Purchase Price thereof (including any increase in the Purchase Price pursuant to a supplemental invoice presented pursuant to such Article 4) which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee on or 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 or Bills of Sale from the Builder covering the units being settled for to the Assignee executed and delivered contemporaneously with the delivery and acceptance of such units transferring to the Assignee all right, title and interest of the Builder in such units, 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 such units were free of all claims, liens, security interests and other encumbrances of any nature, except (i) any claims, liens, security interests or other encumbrances created by any person other than the Builder or any of its affiliates, after such unit has been handed over by the Builder to CNR at the storage area at the Builder's plant pursuant to the Bailment Agreement and (ii) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto; and covenanting to defend the title to such units against demands of all persons whomsoever based on claims (other than any thereof referred to in the foregoing clauses (i) and (ii)) 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 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) an invoice of the Builder for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, and,

if required by Article 4 of the Conditional Sale Agreement, such invoice and supplemental invoice shall be accompanied by or have endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) an opinion of counsel for the Builder dated as of such Closing Date addressed to the Assignee and the Vendee to the effect that the aforesaid Bills of Sale have been duly authorized, executed and delivered by the Builder and are valid and effective to vest in the Assignee all the right, title and interest of the Builder in such units free from all liens, security interests and other encumbrances arising from through or under the Builder, except (a) any claims, liens, security interests or other encumbrances created by any person other than the Builder or any of its affiliates, after such unit has been handed over by the Builder to CNR at the storage area at the Builder's plant pursuant to the Bailment Agreement and (b) the rights of any of the parties under the Participation Agreement and all Exhibits and Annexes thereto; and

(e) 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 4) 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;

provided, however, that with respect to Equipment for which a Final Supplemental Invoice (as defined in the Conditional Sale Agreement) is submitted by the Builder as permitted by Article 4 of the Conditional Sale Agreement, the only documents which must be delivered to the Assignee are those required by subparagraphs (c) and (e) of this Section 4.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned 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. 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 and the Conditional Sale Agreement

with respect to which payment has not been made by the Assignee.

SECTION 5. 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 14 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, the Vendee and their successors and assigns, that the Conditional Sale Agreement and this Assignment were duly authorized by it and lawfully executed and delivered by it, that, assuming due authorization, execution and delivery by the other parties thereto and assuming the timely filing of the Conditional Sale Agreement and this Assignment and any other documents relating thereto or copies or notices thereof in accordance with the laws of all jurisdictions in which such recording or filing is required, the Conditional Sale Agreement and this Assignment are, insofar as the Builder is concerned, legal, valid and existing agreements binding upon and enforceable against the Builder in accordance with their terms and that they are now in force without amendment thereto;

(b) agrees that it will from time to time, 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 all 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 by the Builder or intended so to be; and

(c) agrees that, upon payment in full to the Builder and at the 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 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all the rights conferred by rights and obligations hereunder shall be governed by the laws of the State of Maryland; provided, however, that the parties shall be entitled to all the rights conferred by 49 U.S.C. § 11303, 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 markings on the units of Equipment.

SECTION 8. 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 the date first above written, the actual dates of execution hereof by the parties hereto are the dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the date first above written.

NATIONAL STEEL CAR LIMITED,

by _____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

MERCANTILE-SAFE DEPOSIT AND
TRUST COMPANY, as Agent,

by

Assistant Vice President

[Corporate Seal]

Attest:

ASSISTANT Corporate Trust Officer

PROVINCE OF ONTARIO,)
) ss.:
JUDICIAL DISTRICT OF HAMILTON-WENTWORTH,)

On this 15th day of DECEMBER 1980, before me personally appeared R. W. COOKE, to me personally known, who being by me duly sworn, says that he is a Vice President of NATIONAL STEEL CAR LIMITED, 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.

[Seal] Commission for Oaths

My Commission expires

PAUL ROBERT KING, a Commissioner, etc., in and for the Province of Ontario, for Campbell, Godfrey & Lewtas, Barristers & Solicitors. Student-At-Law. Expires July 31st, 1983.

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this day of 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

[Notarial Seal] Notary Public

My Commission expires

PROVINCE OF ONTARIO,)
) ss.:
JUDICIAL DISTRICT OF HAMILTON-WENTWORTH,)

On this day of 1980, before me personally appeared , to me personally known, who being by me duly sworn, says that he is a Vice President of NATIONAL STEEL CAR LIMITED, 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.

[Seal] _____
Commission for Oaths

My Commission expires

STATE OF MARYLAND,)
) ss.:
CITY OF BALTIMORE,)

On this 15th day of December 1980, before me personally appeared R. E. Schreiber , to me personally known, who being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Patricia A. Shilow
[Notarial Seal] _____
Notary Public

My Commission expires 7-1-82

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 September 15, 1980.

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

by

Authorized Officer