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RECORDATION NO. 13649-A

MAY 25 1982 - 10 30 AM

RECORDATION NO. 13649 INTERSTATE COMMERCE COMMISSION

MAY 25 1982 - 10 30 AM

INTERSTATE COMMERCE COMMISSION



Grand Trunk Western Railroad Co.

Law Department

131 West Lafayette Boulevard
Detroit, Michigan 48226
(313) 962-2260

FEDERAL EXPRESS

Mrs. Agatha L. Mergenovich
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

2-145A017

No.
Date MAY 25 1982
Fee \$ 50.00

ICC Washington, D. C.

May 21, 1982
File:

RECEIVED
MAY 25 10 21 AM '82
I.C.C.
FEE OPERATION BR.

Dear Mrs. Mergenovich:

Enclosed for recordation with the Interstate Commerce Commission are counterparts of Conditional Sale Agreement and Agreement and Assignment, both dated as of April 2, 1982. The Conditional Sale Agreement is a primary document.

The parties to said documents are:

Vendor: Portec, Inc.
1800 Century Boulevard, N.E.
Suite 680
Atlanta, Georgia, 30345

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

Assignee of the Vendor: Bankers Trust Company
280 Park Avenue
New York, New York, 10017

The description of the equipment covered by said documents is as follows:

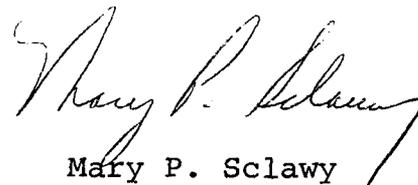
52 newly rebuilt 89-foot flat cars with attached roofless tri-level auto racks with side screens and end doors, bearing road numbers GTW 311157-311208, both inclusive, and the legend "Ownership Subject to a Security Agreement Filed With the Interstate Commerce Commission."

Also enclosed is our Check No. 623 in the amount of \$50.00.

Mrs. Agatha L. Mergenovich
Secretary, I.C.C.
May 21, 1982 - File: 352-Sep.
Page Two

Please accept one counterpart of each document for filing, stamp the remaining with your recordation number and return them with your fee receipt to the undersigned.

Sincerely,



Mary P. Sclawy
Attorney

MPS:bjm
Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mary P. Sclawy, Atty.
Grand Trunk Western RR Co.
Law Department
131 West Lafayette Boulevard
Deyroit, Michigan 48226

May 25, 1982

Dear Madam:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/25/82 at 10:30AM, and assigned re-
recording number(s) 13649, & 13649-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

RECORDATION NO. 13649

MAY 25 1982 - 10 30 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 2, 1982

Among

PORTEC, INC.,

Builder,

GRAND TRUNK WESTERN RAILROAD COMPANY,

Railroad,

and

GRAND TRUNK CORPORATION,

Guarantor.

Filed with the Interstate Commerce Commission
pursuant to 49 U.S.C. §11303 on , 1982, at ,
recordation number .

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of April 2, 1982, among PORTEC, INC. (hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof), a Delaware corporation; GRAND TRUNK WESTERN RAILROAD COMPANY (the "Railroad"), a Michigan corporation and a wholly-owned subsidiary of Grand Trunk Corporation; and GRAND TRUNK CORPORATION, a Delaware corporation ("GTC" or the "Guarantor").

The Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Rack Equipment"). The Builder has agreed to rebuild, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule C hereto (the "Flat Car Equipment"). The Rack Equipment and the Flat Car Equipment shall be collectively referred to as the "Equipment".

The Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Railroad under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guarantee and making certain further agreements as hereinafter set forth.

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

ARTICLE 1. Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the company described in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and businesses, 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the company named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. In order to secure the payment and performance of all of its obligations to the Vendor under this Agreement, the Railroad hereby grants to the Vendor a first and prior security interest in and lien upon the flat cars to be rebuilt (as described in Schedule C hereto), all accessions and additions thereto and the proceeds thereof and warrants to the Vendor that it has title to such flat cars, and that there are no security interests in or liens or other encumbrances upon such flat cars except those created by this Agreement. Such security interest shall continue until the Railroad shall have made all of its payments under this Agreement and shall have kept and performed all of its undertakings contained herein. Notwithstanding any other provisions of this Agreement to the contrary, it is agreed and understood that the Builder's sole warranty hereunder with respect to the existence of liens upon and security interests in the Flat Car Equipment is that such Equipment is not subject to any liens, security interests or other encumbrances in favor of any creditor of the Builder.

Pursuant to this Agreement, the Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto at its plant set forth in said Schedule B and will rebuild the units of the Equipment to be rebuilt by it as described in Schedule C hereto at its plant set forth in Schedule C and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed or rebuilt in accordance with the specifications set forth therefor in Schedules B and C hereto, respectively, and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (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 the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment. Each unit of the Equipment described in Schedule B will be new equipment, and each unit of the Equipment described in Schedule C will be newly rebuilt equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedules B and C hereto or at such other place or places as the Railroad and the Builder may agree, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedules B and C hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of the Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article

17 hereof or if any event of default (as described in Article 17 hereof), or event which with lapse of time and/or demand could constitute such an event of default, shall have occurred.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond its reasonable control, including, but not limited to, acts of God, acts of government, 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 equipment or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before November 30, 1982, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph or any other cause beyond its reasonable control, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction or rebuilding, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad, 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 or rebuilding of the Equipment in accordance with its standard quality control practices. 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 Railroad 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 Railroad shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the "Certificate of Acceptance") stating that each such unit has been delivered to, and inspected and accepted on behalf of, the Railroad and that each such Unit has been marked in accordance with Article 8 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

On delivery and acceptance of each such unit hereunder at the place specified for delivery, risk of loss of, or damage to, such unit shall thereupon pass to the Railroad, and the Railroad will assume the responsibility 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 such unit.

ARTICLE 4. Purchase Price and Payment. The base price of each unit of the Equipment is set forth in Schedules B and C hereto. Such base price is subject to such increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased, including, without limitation, any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

If the aggregate Purchase Price of Equipment for which settlement has been made under this Agreement is in an amount in excess of \$3,889,600, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder (and any assignee of the Builder) shall, upon request of the Railroad, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving the Builder's security interest in such Equipment in a manner acceptable to the Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price under this Agreement to not more than \$3,889,600 and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor,

by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group") as the Builder and the Railroad may agree to.

The Railroad 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 the Equipment, as follows:

(a) in 14 consecutive equal semi-annual installments, as hereinafter provided, an amount equal to the Purchase Price of the Equipment described in Schedule B hereto (the aggregate of said installments being hereinafter called the "Rack CSA Indebtedness").

(b) in 14 consecutive equal semi-annual installments, as hereinafter provided, an amount equal to the Purchase Price of the Equipment described in Schedule C hereto (the aggregate of said installments being hereinafter called the "Flat Car CSA Indebtedness") (the total of the installments due under subparagraphs (a) and (b) being hereinafter called the "CSA Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented may be a preliminary invoice, subject to upward adjustment by an amount not exceeding 10% of the amount of such invoice upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least ten days prior to any subsequent Closing Date for settlement on such subsequent Closing Date for any increase in the Purchase Price; it being understood and agreed by the Builder that any preliminary invoice or invoices presented by it in respect of any Group shall be in an amount not in excess of the final Purchase Price of such Group.

The installments of the CSA Indebtedness payable pursuant to subparagraph (a) of the fourth paragraph of this Article 4 shall be payable semi-annually on June 15 and December 15 in each year, commencing on December 15, 1982 and to and including June 15, 1989; and the installments of

the CSA Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable semi-annually on June 15 and December 15 in each year, commencing on December 15, 1982 and to and including June 15, 1989. The unpaid portion of the CSA Indebtedness shall bear interest from the Closing Date on which such CSA Indebtedness was incurred at the rates per annum set forth in, and/or determined pursuant to, Schedule D hereto. Except as otherwise provided in such Schedule D, such interest shall be payable, to the extent accrued, on June 15 and December 15 in each year, commencing on December 15, 1982.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (prior to November 30, 1982) not more than 10 business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least 6 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 Detroit, Michigan, or New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of 12 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the post maturity rate or rates per annum set forth in, and/or determined pursuant to, Schedule D hereto, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

The sum of \$3,889,600 is referred to in this paragraph as the "Commitment", and, in addition to all other payments required to be made by it under this Agreement, the Railroad agrees to pay to the Vendor a Commitment fee at the rate of 1/4 of 1% per annum on the daily average unused portion of the Commitment. Such Commitment fee shall be payable on December 15, 1982, in respect of the period from March 16, 1982 to the earlier of November 30, 1982 or the last Closing Date hereinunder (which shall be designated as such by the Railroad).

All payments provided for in this Agreement shall be made in immediately available funds and 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 Article 9 hereof and in Schedule D hereto, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 16 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Obligations of the Guarantor. The Guarantor, in order to induce the Vendor to enter into this Agreement and for other value received, hereby unconditionally guarantees to the Vendor that the CSA Indebtedness and interest thereon and all other sums owing by the Railroad under this Agreement will be duly and punctually paid when due, and that all other obligations of the Railroad under this Agreement will be duly and punctually performed, whether at stated maturity or by declaration or otherwise, irrespective of any enforcement against the Railroad of any of the rights of the Vendor under this Agreement. Such guarantee shall be a guarantee of payment and not of collection and without in any way limiting the foregoing, such guarantee shall not be affected by the bankruptcy, insolvency, dissolution or any other similar proceeding affecting the Railroad. The aforesaid guarantee and the liability or obligations of the Guarantor shall not in any way be affected or impaired by any compromise, settlement, release, renewal, extension, indulgence, change in, amendment to or modification of, this Agreement.

The Guarantor hereby agrees that its aforesaid guarantee 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 Agreement. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default under this Agreement and all notices with respect to this Agreement and all demands whatsoever under this Agreement. No waiver by the Vendor of any of its

rights under this Agreement and no action by the Vendor to enforce any of its rights under this Agreement or failure to take, or delay in taking, any such action or failure to obtain, and/or to perfect any security interest in any collateral or the proceeds thereof shall affect the obligations of the Guarantor hereunder. The Guarantor hereby agrees that any claims or other rights that it may acquire by reason of performance of its obligations hereunder, by subrogation or otherwise, shall be subordinate in right of payment to all of the claims and other rights of the Vendor hereunder and may not be exercised against the Railroad under this Agreement with respect to any of the units of the Equipment. The enforceability and validity of this guarantee shall not be affected in any way by any lease of the Equipment.

ARTICLE 6. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, Federal or foreign taxes (other than net income, gross receipts (except gross receipts taxes in the nature of or in lieu of sales or use taxes) excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad 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 Railroad 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 non-payment 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. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad 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 Railroad 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 Railroad shall have approved the payment thereof.

ARTICLE 7. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of its payments under this Agreement and shall have kept and performed all of its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 9 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, 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 Railroad at its address referred to in Article 22 hereof, (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 Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 9 hereof and not theretofore applied as therein provided. The Railroad hereby

waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or 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 Railroad.

ARTICLE 8. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedules B and C hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, 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 words "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission" or other appropriate markings approved 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 Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment 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 by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association, corporation or other entity 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 Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 9. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of units of Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which all required payments shall have been made to the Vendor pursuant to this Article 9) shall exceed \$250,000 in the case of the Rack Equipment or \$250,000 in the case of the Flat Car Equipment (or such lesser amounts as the Railroad may elect), the Railroad, within 30 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Rack Equipment or Flat Car Equipment, as the case may be, having suffered a Casualty Occurrence and shall promptly pay to the Vendor a sum equal to the Casualty Value as of the date of such payment of such unit or units of the Rack Equipment or Flat Car Equipment, as the case may be, having suffered a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 9 in respect of the Rack Equipment or the Flat Car Equipment, as the case may be, shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but not less than 10 days prior to the due date of the next installment of the CSA Indebtedness, in whole or in part, (i) to prepay installments of the Rack CSA Indebtedness or the Flat Car Indebtedness, as the case may be, or (ii) toward the cost of a new or newly rebuilt unit or units of equipment of the same type as the Equipment which it replaces, to replace units suffering a Casualty Occurrence. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. In case any money is applied pursuant to this Article 9 to prepay indebtedness, it shall be so applied to reduce each installment of Rack CSA Indebtedness or Flat Car CSA Indebtedness, as the case may be, thereafter falling due pro rata.

The Casualty Value of each unit of the Rack Equipment or the Flat Car Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof as the unpaid Rack CSA Indebtedness or Flat Car CSA Indebtedness, as the case may be (without giving effect to any prepayments then or theretofore made pursuant to this Article 9), as of the date payment is made with respect to such Casualty Occurrence, bears to the original Rack CSA Indebtedness or Flat Car CSA Indebtedness, as the case may be. The Casualty Value of each replacement unit, in respect of Rack Equipment or Flat Car Equipment, as the case may be, shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Rack CSA Indebtedness or Flat Car CSA Indebtedness, as the case may be (without giving effect to any prepayments then or theretofore made pursuant to this Article 9), as of the date payment is made with respect to such Casualty Occurrence, bears to the unpaid Rack CSA Indebtedness or Flat Car CSA Indebtedness, as the case may be (without giving effect to any such prepayments), as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 8 hereof. Any and all replacements of Rack Equipment or Flat Car Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Rack Equipment or Flat Car Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be put and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is new or newly rebuilt equipment of the same type as the Equipment which it replaces, and has been marked as required by the provisions of this Article 9 and certifying the cost of such replacement unit and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that the Vendor has title to and a valid and perfected first priority security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 9 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open-market commercial paper rated A-1 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 9, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less

than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 9 (including, for this purpose, Investments and interest received by the Vendor thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

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

The Railroad will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto, and public liability insurance, in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it. For the purposes of this paragraph, insurance shall include self-insurance, provided the Railroad maintains adequate reserves to cover the risks not otherwise insured.

ARTICLE 10. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense and comply with a preventive maintenance schedule consistent with the Builder's preventive maintenance schedules, if any, and which will include testing, repair and overhaul of the Equipment so that the Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) be in

compliance with any and all applicable laws and regulations and (c) desirable to and suitable for immediate purchase or lease and use by a Class I line-haul railroad (not then or prospectively a debtor in any insolvency or reorganization proceedings) in the event of sale or lease upon default by the Railroad. In no event shall the Equipment be maintained or scheduled for maintenance on a basis less frequently than the maintenance or maintenance scheduling basis employed as of the date hereof by the Railroad for similar equipment.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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, replacement or addition of or to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith and by appropriate proceedings, 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. Reports and Inspections. On or before March 31 in each year, commencing March 31, 1983, the Railroad shall furnish to the Vendor an accurate statement signed by the Vice President of Operations or any other appropriate officer with responsibility therefor of the Railroad (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) or that have been withdrawn from use pending repairs (other than running repairs) or any substantial modification, 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, modified or repainted during the period covered by such statement, the numbers and markings required by Articles 8

and 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the normal use thereof for equipment of like characteristics, upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad. In addition, the Railroad may lease the Equipment to one or more affiliates or, under a written lease for a term not exceeding one year (including all renewal or extension options reserved to the lessee or lessor), to a responsible railroad company, as determined by the Railroad, in any such case without the Railroad or the Guarantors being released from their obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become or be a lien, charge or security interest on the Equipment, or on any unit or part thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the non-payment thereof does not, in the opinion of the Vendor,

adversely affect the property or rights of the Vendor in or to any of 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; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any amounts so paid by the Vendor unless the Railroad shall have approved the payment thereof or the Vendor shall have received an opinion of counsel for the Vendor that such claim constitutes or would constitute a lien, charge or security interest on or in the Equipment equal or superior to the Vendor's interest therein or otherwise adversely affect the property or rights of the Vendor in or to the Equipment.

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 14. Railroad's Indemnities. The Railroad 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 counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad 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 all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Patent Indemnities; Builder's Warranties. Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder, and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder

agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, its assigns or the users of the Equipment because of the use in or about the construction or rebuilding or operation of any of such 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 Railroad likewise will indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or rebuilding or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder, or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. 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 Railroad 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 Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or rebuilding 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. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor, except as provided in Article 12 hereof. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof or the District of Columbia which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant, provided the Railroad and the Guarantor shall duly confirm that such action does not in any way affect their obligations hereunder, and provided such railroad company shall be a solvent Class I railroad.

The Guarantor shall not merge with any other corporation nor sell or otherwise dispose of all or substantially all of its assets to anyone unless (a) in the event of a merger, the surviving corporation (if other than the Guarantor) shall specifically assume by written instrument delivered to the Vendor the obligations of the Guarantor under this Agreement, and in the event of a sale or other disposition of all or substantially all of the assets of the Guarantor, the transferee shall specifically assume by written instrument delivered to the Vendor the obligations of the Guarantor under this Agreement and (b) there shall have been delivered to the Vendor an opinion of counsel satisfactory to it to the effect that each such instrument of assumption has been duly authorized, executed and delivered, and the obligations of the Guarantor under this Agreement shall have become legal, valid and binding obligations of such successor corporation or transferee. No such sale, other disposition or assumption shall in any way affect the obligations of the Guarantor 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 Railroad and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of its obligations to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 15 hereof or Schedule A hereto, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 6, 14 and 15 hereof and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Railroad and the Guarantor recognize that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Guarantor jointly and severally represent, warrant, covenant and agree, for the purpose of assurance to any person, firm, corporation or other entity 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, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as all other rights hereunder which may be so assigned, shall not be subject to, and neither the Railroad nor the Guarantor shall at any time assert against any such assignee, any claim, defense, setoff

or recoupment whatsoever which they or either of them may now have or may hereafter acquire against the Builder, including, without limitation, any claim, defense, setoff or recoupment arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, rebuilding, delivery or warranty thereof, or with respect to any indemnity herein contained, or any claim, defense, setoff or recoupment arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor, as the case may be, by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver or cause to be delivered to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered by the Railroad and the Guarantor to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificates or papers required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of the Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement for the benefit of the Builder excluding from this Agreement those units of Equipment for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's title to and security interest in the Equipment in a manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of the Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the lesser of (x) the highest rate of interest charged from time to time for prime commercial loans of 90-day maturities by any of the four New York City banks having the largest total assets on the date such payment was due or (y) the highest rate permitted by law.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement and the same shall not have been paid by the Railroad or the Guarantor within 5 days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof or for more than 30 days after it has actual knowledge, whichever occurs sooner, fail or refuse to comply with any 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 or performed or to make provision satisfactory to the Vendor for such compliance and the same shall not have been remedied by the Guarantor; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor under this Agreement shall not have been (and shall not continue to be) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law 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 indebtedness payable hereunder),

and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor under this Agreement shall not have been (and shall not continue to be) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor 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 60 days after such proceedings shall have been commenced; or

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate or rates per annum referred to in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated. The Railroad and the Guarantor shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could 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 by notice to the Railroad and the Guarantor 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 had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor 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 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to 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 Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person or entity and for such purpose may enter upon the Railroad's premises 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 Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (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 or (b) the Equipment to be moved to such interchange point or points of the Railroad 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 Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users; provided, however, that the Railroad shall not be liable in connection with such inspection, except in the case of negligence of the Railroad or any of its employees or agents, for any injury to or death of any person exercising inspection rights under this paragraph. 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 Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any 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 18 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 Railroad and the Guarantor by telegram or registered mail, addressed as provided in Article 22 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 Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, 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 as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment 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 Railroad; provided further that if the Railroad 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 18.

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 Railroad, the Guarantor and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, 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 Railroad or the Guarantor 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 Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling 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 or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad and the Guarantor shall be given written notice of such sale not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad and the Guarantor as provided in Article 22 hereof. 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 offerers have been solicited in writing to submit bids), it shall be subject to the right of the Railroad or the Guarantor to purchase or provide a purchaser, within 10 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 Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), 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 Railroad hereunder.

Each and every right, power and remedy hereby specifically given to the Vendor shall be in addition to every other right, power and remedy hereby specifically given or now or hereafter existing by statute, at law or in equity, and each and every right, 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 rights, 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 right, power or remedy and no renewal or extension of any payments due hereunder shall impair any such right, 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 Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's or the Guarantor'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 Railroad's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults in payments. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for under the relevant provisions of Title 11 of the United States Code as it applies to railroad equipment, or of any other bankruptcy act, so that the Vendor shall have the right to take possession of the Equipment upon an event of default under this Agreement regardless of whether or not the Railroad is in reorganization.

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 Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate or rates per annum referred to in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad or the Guarantor. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction 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 Railroad and the Guarantor 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 Railroad and the Guarantor, to the full extent permitted by law, hereby waive 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 unit 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 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303, and to be duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit to be duly published, or adequate provision made therefor, in the Canada Gazette in accordance with said Section 86. The Railroad will further cause all necessary filings and recordings, and, when required, refilings and rerecordings of this Agreement, any assignments hereof and any amendments or supplements hereto or thereto and/or appropriate financing statements or continuation statements to be made, and from time to time when required refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code as in effect in the State of Michigan (and, if the Railroad changes its chief executive office or chief place of business to a different state, in any such other state), and in any other office in the United States of America where filing is required by applicable state or Federal law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will provide the Vendor with not less than 30 days prior notice of any change of its name or of its chief executive office or chief place of business. The Railroad will from time to time do and perform any other acts and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in this Article 20.

The Railroad will promptly furnish to the Vendor certificates or other evidence satisfactory to the Vendor of

such filing, registering, depositing and recording. The Railroad will furnish to the Vendor upon request an opinion of counsel for the Railroad to the effect that all necessary filings and recordings have been made to protect the interests of the Vendor in and to the Equipment.

ARTICLE 21. Payment of Expenses. The Railroad 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 this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be in writing and shall be deemed to be properly served if delivered or mailed, postage prepaid and return receipt requested, to it at its chief place of business at the following specified addresses:

(a) to the Railroad at 131 West Lafayette Boulevard, Detroit, Michigan 48226,

(b) to the Builder at its address specified in Item 1 of Schedule A hereto,

(c) to Grand Trunk Corporation at 477 Congress Street, Portland, Maine 04101, and

(d) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

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

ARTICLE 23. 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 Schedules hereto, which are a part of this Agreement, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation, modification or termination of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor, the Railroad and the Guarantor.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business is located in the state specified in clause (a) of Article 22 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

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, for convenience, as of the date first set forth above, 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 their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

PORTEC, INC.

BY: *J. A. Kovach*

Senior Vice President

[Corporate Seal]

Attest:

Jane E. Hillon
Secretary

GRAND TRUNK WESTERN RAILROAD
COMPANY,

By: *R. S. [Signature]*
Asst. Vice President

[Corporate Seal]

Attest:

E. S. [Signature]
Secretary

GRAND TRUNK CORPORATION

By: *R. S. [Signature]*
Vice President

[CORPORATE SEAL]

Attest:

E. S. [Signature]
Assistant Secretary

STATE OF ILLINOIS)
) ss.:
COUNTY OF DU PAGE)

On this 20th day of May, 1982, before me personally appeared S. A. Kovach, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of PORTEC, INC., 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]

Sammy Aguero
Notary Public
My Commission expires
Sept. 19, 1984.



SCHEDULE A

to

Conditional Sale Agreement

- Item 1: Portec, Inc., a Delaware corporation, 1800 Century Blvd. N.E., Suite 680, Atlanta, Ga. 30345.
- Item 2: Portec, Inc. (hereinafter in this Schedule A called "Portec") warrants that the Equipment as noted in Schedule B and the Rebuilding of the Flat Cars as noted in Schedule C will be in accordance with the requirements, specifications, and standards set forth or referred to in schedules B or C or in Article 2 of this Agreement and warrants the Equipment or Rebuilding will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by Portec) and workmanship under normal use and service, Portec's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment or Rebuilding which shall be returned to Portec with transportation charges prepaid, within one year after the delivery of such unit to the Railroad, and which Portec's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF PORTEC 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 OTHER OBLIGATIONS OF LIABILITIES UNDER ARTICLES 2, 3, 4, 6, 7, 14, 15, and 16 OF THIS AGREEMENT AND PORTEC 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. IT IS FURTHER UNDERSTOOD AND AGREED THAT IN NO EVENT SHALL PORTEC BE LIABLE FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES NOR FOR COMMERCIAL LOSS OR LOST PROFIT OF ANY KIND. Portec further agrees with the Railroad that neither the inspection as provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2.

Schedule B

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Serial Numbers (inclusive)</u>	<u>Estimated Time of Delivery at Builder's Plant</u>
Ortec, Inc.	Roofless Tri-Level Auto Racks, with Side Screens and End Doors	EIKP 111	Paragon Railcar Operations, Novi, Michigan	52*	\$36,000**	\$1,872,000**	GIW 311157 through 311208	June 1982

To be attached to the flat cars described in Schedule C.

* Subject to adjustment of 10%, as set forth in Article 4.

Schedule C

<u>Builder</u>	<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Serial Numbers (inclusive)</u>	<u>Estimated Time of Delivery at Builder's Plant</u>
Portec, Inc.	Rebuilt 89' Flat Cars	AAR Rule 88, 1982	Midwest Railcar Operations, Clinton, Illinois	52	\$32,000*	\$1,664,000*	GTW 311157 through 311208	June 1982

* Subject to adjustment of 10%, as set forth in Article 4.

SCHEDULE D

to

CONDITIONAL SALE AGREEMENT

Determination of Interest Rates

The aggregate unpaid portion of the CSA Indebtedness shall, for purposes of this Schedule D, be deemed to be either Prime Rate Indebtedness, Certificate of Deposit Indebtedness or Eurodollar Indebtedness, whichever the Railroad shall designate by telephonic notice (promptly confirmed in writing) to the Vendor at least one business day in the case of Prime Rate Indebtedness or Certificate of Deposit Indebtedness, or at least three working days (as defined below), in the case of Eurodollar Indebtedness, before the first Closing Date. If such unpaid portion is to be deemed Certificate of Deposit Indebtedness or Eurodollar Indebtedness, such notice shall also specify the duration of the initial Certificate of Deposit Interest Period applicable thereto (which shall be either 30, 60 or 90 days) or the initial Eurodollar Interest Period applicable thereto (which shall be either one, two, three or six months), as the case may be, and which shall commence on the first Closing Date. If the Railroad fails to give such notice to the Vendor within such times, the aggregate unpaid portion of the CSA Indebtedness shall be deemed to be Prime Rate Indebtedness.

The Prime Rate Indebtedness shall bear interest on the amount thereof from time to time outstanding at an interest rate per annum for each day equal to:

- (i) prior to June 15, 1985, the Prime Rate (as defined below),
- (ii) from June 15, 1985 to June 14, 1987, the Prime Rate plus 1/4 of 1%, and
- (iii) from June 15, 1987 to June 14, 1989, the Prime Rate plus 1/2 of 1%.

The term "Prime Rate" shall mean the rate of interest publicly announced by Bankers Trust Company, a New York banking corporation ("B.T.Co."), in New York City from time to time as its prime lending rate for domestic commercial loans.

The Certificate of Deposit Indebtedness shall bear interest on the amount thereof from time to time outstanding at an interest rate per annum for each day equal to:

- (i) prior to June 15, 1985, the Certificate of Deposit Rate (as defined below) plus 1/2 of 1%,
- (ii) from June 15, 1985 to June 14, 1987, the Certificate of Deposit Rate plus 3/4 of 1%, and
- (iii) from June 15, 1987 to June 14, 1989, the Certificate of Deposit Rate plus 1%.

Such interest shall be payable, to the extent accrued, on the last day of each Certificate of Deposit Interest Period. The term "Certificate of Deposit Rate" shall mean, with respect to each applicable Certificate of Deposit Interest Period, the rate per annum quoted by B.T.Co. as of 10:00 A.M., New York City time, on the first day of such Certificate of Deposit Interest Period for its own negotiable certificates of deposit with a maturity equal to the requested length of such Certificate of Deposit Interest Period in amounts approximately equal to the Certificate of Deposit Indebtedness. The rate specified in the preceding sentence shall have been adjusted for and shall reflect (i) all reserve requirements (including, without limitation, basic, supplemental, marginal, special and emergency reserves) under any regulations of the Board of Governors of the Federal Reserve System or other governmental authority having jurisdiction with respect thereto that B.T.Co. determines would be applicable on such day to such certificate of deposit and (ii) the assessment rate as estimated by B.T.Co. for determining the annual assessment payable by B.T.Co. to the Federal Deposit Insurance Corporation for insuring such certificate of deposit.

The Eurodollar Indebtedness shall bear interest on the amount thereof from time to time outstanding at an interest rate per annum for each day equal to:

- (i) prior to June 15, 1985, the Eurodollar Rate (as defined below) plus 1/2 of 1%,
- (ii) from June 15, 1985 to June 14, 1987, the Eurodollar Rate plus 3/4 of 1%, and
- (iii) from June 15, 1987 to June 14, 1989, the Eurodollar Rate plus 1%.

Such interest shall be payable, to the extent accrued, on the last day of each Eurodollar Interest Period. The term "Eurodollar Rate" shall mean, with respect to each applicable Eurodollar Interest Period, the rate per annum determined by B.T.Co. as of 10:00 A.M., New York City time, two working days prior to the beginning of such Eurodollar Interest Period, in accordance with its customary general practice, at which U.S. dollar deposits are offered to B.T.Co. in the interbank Eurodollar market in the place where the foreign currency and exchange operations of the office from time to time selected by B.T.Co. to determine such rate are customarily conducted, for delivery in immediately available funds on the first day of such Eurodollar Interest Period for the number of months comprised therein and in an amount approximately equal to the Eurodollar Indebtedness then outstanding or to be outstanding. The rate specified in the preceding sentence shall have been adjusted for and shall reflect all reserve requirements, as determined by B.T.Co., current on such date two working days prior to the beginning of such Eurodollar Interest Period (including, without limitation, basic, supplemental, marginal, special and emergency reserves) under any regulations of the Board of Governors of the Federal Reserve System or other governmental authority having jurisdiction with respect thereto, as now and from time to time hereafter in effect, dealing with reserve requirements prescribed for Eurocurrency funding (currently referred to as "Eurocurrency liabilities") of a member bank of such system. As used in this Schedule D, the term "working day" shall mean any business day on which dealings in foreign currencies and exchange between banks may be carried on in the interbank Eurodollar market.

The Railroad may elect to convert the Eurodollar Indebtedness outstanding into Certificate of Deposit Indebtedness or Prime Rate Indebtedness by giving irrevocable notice by telephone (promptly confirmed in writing) to the Vendor of such election (specifying the type of Indebtedness into which such conversion is to be made and, if Certificate of Deposit Indebtedness, the duration of the initial Certificate of Deposit Interest Period, which shall be either 30,

60 or 90 days), to be received by the Vendor at least one business day prior to the date of conversion and, if no event of default has occurred and is then continuing, such conversion shall be made on the last day of the then current Eurodollar Interest Period. The Railroad may elect to convert the Certificate of Deposit Indebtedness outstanding into Prime Rate Indebtedness or Eurodollar Indebtedness by giving irrevocable notice of such election to the Vendor in the same manner as provided above in this paragraph, at least one business day in the case of a conversion into Prime Rate Indebtedness and three working days in the case of a conversion into Eurodollar Indebtedness (in which case such notice shall also specify the duration of the initial Eurodollar Interest Period applicable thereto, which shall be either one, two, three or six months), prior to the date of conversion, and, if no event of default has occurred and is then continuing, such conversion shall be made on the last day of the then current Certificate of Deposit Interest Period. The Railroad may elect to convert the Prime Rate Indebtedness outstanding into Certificate of Deposit Indebtedness or Eurodollar Indebtedness by giving irrevocable notice of such election to the Vendor in the same manner as provided above in this paragraph, specifying the date of conversion and the duration of the initial Certificate of Deposit Interest Period (which shall be either 30, 60 or 90 days) or Eurodollar Interest Period (which shall be either one, two, three or six months) applicable thereto, as the case may be, at least one business day in the case of a conversion into Certificate of Deposit Indebtedness or three working days in the case of a conversion into Eurodollar Indebtedness, prior to the date of conversion, and, if no event of default has occurred and is then continuing, such conversion shall be made on the date of conversion specified in such notice. If the Railroad fails to give telephonic notice (promptly confirmed in writing) to the Vendor at least three working days before the end of any Interest Period of its selection of Eurodollar Indebtedness or one business day before the end of any Interest Period of its selection of Certificate of Deposit Indebtedness, specifying the duration of the next Interest Period (which shall be one, two, three or six months in the case of a Eurodollar Interest Period or 30, 60 or 90 days in the case of a Certificate of Deposit Interest Period), then all the Eurodollar Indebtedness or Certificate of Deposit Indebtedness shall be deemed to have been converted into Prime Rate Indebtedness on the last day of the then current Interest Period.

If the Railroad at any time selects an Interest Period which would otherwise extend beyond a date on which the Railroad is required to pay an installment of the CSA

Indebtedness pursuant to Article 4, then the Railroad shall be deemed to have selected, with respect to the amount of the installment to be paid, an Interest Period which will expire on the date on which such amount is required to be paid. Notwithstanding anything herein to the contrary, if any Closing Date shall fall within an Interest Period, that portion of the CSA Indebtedness incurred on such Closing Date shall be deemed to be Prime Rate Indebtedness until the last day of such Interest Period.

In the event that any payment required to be made by the Railroad under this Agreement is not made when due and payable, then, until payment in full of the overdue amount, such amount shall bear interest at a rate per annum which is 1% above the otherwise applicable rate under this Schedule D. Nothing in this paragraph shall impair any of the rights and remedies of the Vendor under Articles 17 and 18.

Nothing in this Agreement shall require the Railroad to pay interest to the Vendor at a rate exceeding the maximum rate permitted by applicable law to be charged or received by the Vendor, it being understood that neither this paragraph nor Article 24 is intended to make the criminal laws of any jurisdiction applicable in circumstances in which they would not otherwise apply. If the rate of interest specified herein would otherwise exceed the maximum rate so permitted to be charged or received with respect to the Vendor, the rate of interest required to be paid hereunder shall be automatically reduced to such maximum rate.

For purposes of this Schedule D, notwithstanding any other provision of this Agreement to the contrary, any notice required to be delivered to the Vendor shall not be effective until actually received by the Vendor.

If, before the beginning of any Interest Period, B.T.Co. determines that, by reason of circumstances affecting the interbank Eurodollar market or the certificate of deposit market in the United States of America, adequate and reasonable means do not exist for ascertaining the Eurodollar Rate for such Eurodollar Interest Period or the Certificate of Deposit Rate for such Certificate of Deposit Interest Period in connection with (a) Eurodollar Indebtedness or Certificate of Deposit Indebtedness initially requested by the Railroad, (b) Eurodollar Indebtedness or Certificate of Deposit Indebtedness resulting from any conversion of any

other type of CSA Indebtedness pursuant to this Schedule D, or (c) the continuation of Eurodollar Indebtedness or Certificate of Deposit Indebtedness beyond the expiration of the then current Interest Period with respect thereto, or that the Eurodollar Rate for such Eurodollar Interest Period or the Certificate of Deposit Rate for such Certificate of Deposit Interest Period will not adequately or fairly reflect the cost to B.T.Co. of maintaining or funding such Eurodollar Indebtedness for such Eurodollar Interest Period or such Certificate of Deposit Indebtedness for such Certificate of Deposit Interest Period, then, and in any such case, the Vendor shall forthwith give notice thereof to the Railroad, whereupon, until B.T.Co. notifies the Railroad that the circumstances giving rise to such suspension no longer exist, (i) the obligation of the Vendor to offer a Eurodollar Rate or Certificate of Deposit Rate, as the case may be, and the right of the Railroad to maintain the unpaid portion of the CSA Indebtedness as Eurodollar Indebtedness or Certificate of Deposit Indebtedness hereunder shall be suspended and (ii) the Railroad shall convert the then outstanding Eurodollar Indebtedness or Certificate of Deposit Indebtedness into another type of Indebtedness not affected by any suspension under this Schedule D or by any condition of illegality (as defined below), and shall pay the accrued interest thereon, on the last day of the then current Interest Period applicable to such Eurodollar Indebtedness or Certificate of Deposit Indebtedness. Any determination under this paragraph by B.T.Co. shall be conclusive and binding on the Railroad.

If, after the date hereof, the introduction of, or any change in, any applicable law, rule, regulation, order or decree or in the interpretation or administration thereof by any governmental authority charged with the interpretation or administration thereof, or compliance by B.T.Co. with any request or directive (whether or not having the force of law) of any such authority, shall make it unlawful or impossible for B.T.Co. to maintain or fund any Eurodollar Indebtedness or Certificate of Deposit Indebtedness as contemplated by this Schedule D (any of the foregoing, a "condition of illegality"), then the Vendor shall cause B.T.Co. to give notice thereof forthwith to the Railroad, describing the same in reasonable detail. Upon its receipt of such notice, the Railroad shall be deemed to have converted the then outstanding principal amount of such Eurodollar Indebtedness or Certificate of Deposit Indebtedness into another type of Indebtedness not affected by any suspension under this Schedule D or by any condition of illegality, and

shall promptly pay any accrued interest thereon, on either (a) the last day of the then current Eurodollar Interest Period applicable to such Eurodollar Indebtedness or Certificate of Deposit Interest Period applicable to such Certificate of Deposit Indebtedness if B.T.Co. may lawfully continue to maintain and fund such Eurodollar Indebtedness or Certificate of Deposit Indebtedness to such day or (b) immediately, if B.T.Co. may not lawfully continue to maintain and fund such Eurodollar Indebtedness or Certificate of Deposit Indebtedness to such day. Thereafter, so long as a condition of illegality shall continue, as determined by B.T.Co., the option to convert in to Eurodollar Indebtedness or Certificate of Deposit Indebtedness, as the case may be, shall not be available to the Railroad.

If at any time B.T.Co. shall have determined that any applicable law, rule, regulation, order or decree or the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by B.T.Co. with any request or directive (whether or not having the force of law) made by any such authority, central bank or comparable agency after the date hereof:

(i) shall subject B.T.Co. to any tax, duty or other charge with respect to any Eurodollar Indebtedness or Certificate of Deposit Indebtedness or its obligations to maintain Eurodollar Indebtedness or Certificate of Deposit Indebtedness, or shall change the basis of taxation of payments to B.T.Co. of the installments of or interest on any Eurodollar Indebtedness or Certificate of Deposit Indebtedness or any other amounts due under this Agreement in respect of any Eurodollar Indebtedness or Certificate of Deposit Indebtedness, or its obligations to maintain Eurodollar Indebtedness or Certificate of Deposit Indebtedness (except for changes in the rate of tax on or determined with reference to the overall net income of B.T.Co. imposed by the jurisdiction in which B.T.Co.'s principal executive office is located); or

(ii) shall impose, modify or deem applicable any reserve (including, without limitation, any imposed by the Board of Governors of the Federal Reserve System), special deposit, compulsory loan or similar requirement against assets of, deposits with or for the account of, or

credit extended by, B.T.Co. or shall impose on B.T.Co. or the interbank Eurodollar market or the negotiable certificate of deposit market in the United States any other condition affecting any Eurodollar Indebtedness or Certificate of Deposit Indebtedness or obligations to maintain Eurodollar Indebtedness or Certificate of Deposit Indebtedness; or

(iii) shall impose on B.T.Co. any other condition or change therein directly affecting any Eurodollar Indebtedness or Certificate of Deposit Indebtedness;

and the result of any of the foregoing is to increase the cost to the Vendor of renewing, converting or maintaining any Eurodollar Indebtedness or Certificate of Deposit Indebtedness, or to reduce the amount of any sum received or receivable by the Vendor under this Agreement in respect of such Eurodollar Indebtedness or Certificate of Deposit Indebtedness, then, in any such case, upon demand by the Vendor, the Railroad agrees to pay promptly to the Vendor such additional amount or amounts as will compensate the Vendor in full for such increased cost or reduction. The Vendor will promptly notify the Railroad of any event of which it has knowledge which will entitle the Vendor to compensation pursuant to this paragraph. In such an event, at the option of the Railroad upon ten business days' prior notice given by the Railroad to the Vendor, and subject to the payment of such compensation, the Railroad may convert such outstanding Eurodollar Indebtedness or Certificate of Deposit Indebtedness into Prime Rate Indebtedness. Thereafter, so long as the need for such compensation continues as determined by B.T.Co., the obligation of the Vendor to offer a Eurodollar Rate or a Certificate of Deposit Rate and the right of the Railroad to maintain the unpaid portion of the CSA Indebtedness as or to convert into Eurodollar Indebtedness or Certificate of Deposit Indebtedness, as the case may be, shall be suspended; provided, however, that nothing in this paragraph shall prevent the Railroad from maintaining or converting into Eurodollar Indebtedness or Certificate of Deposit Indebtedness if it pays to the Vendor the compensation provided for in this paragraph. A written statement as to any additional amount or amounts payable pursuant to this paragraph submitted by the Vendor to the Railroad shall be conclusive and binding upon the Railroad absent manifest error.

The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all claims, demands, damages, liabilities and losses whatsoever, and expenses in connection therewith, including counsel fees, arising out of any failure of the Railroad to make any conversion, payment or permitted prepayment of the unpaid portion of the CSA Indebtedness after the Railroad shall have given prior notice thereof as provided in this Agreement or any failure by the Railroad to pay when due (whether upon stated maturity, by acceleration or otherwise) any principal of or interest on any Certificate of Deposit Indebtedness or Eurodollar Indebtedness. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Any Certificate of Deposit Interest Period which would otherwise end on a day which is not a business day shall be extended to the next succeeding business day unless such business day falls in another calendar month, in which case such Certificate of Deposit Interest Period shall end on the next preceding business day. Any Eurodollar Interest Period which would otherwise end on a day which is not a working day shall be extended to the next succeeding working day unless such working day falls within another calendar month, in which case such Eurodollar Interest Period shall end on the next preceding working day. Any Eurodollar Interest Period which begins on a day for which there is no numerically corresponding day in the calendar month during which such Eurodollar Interest Period is to end shall, subject to the preceding sentence, end on the last day of such calendar month.

On at least 3 business days' notice to the Vendor, the Railroad may, from time to time, voluntarily prepay, without premium or penalty, the whole or any part of the unpaid portion of the CSA Indebtedness; provided, however, that no such prepayment shall affect the Railroad's obligation to continue the consecutive semi-annual installments of principal thereon, and any such prepayment of Certificate of Deposit Indebtedness or Eurodollar Indebtedness may be made only on the last day of the then current Interest Period. On the date of any such prepayment, all interest theretofore accrued on the CSA Indebtedness being prepaid shall be payable.