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RECORDATION NO. 11619  
Filed 1425

MAR 31 1980 - 12 30 PM

INTERSTATE COMMERCE COMMISSION



Grand Trunk Western Railroad Co

Law Department

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

March 27, 1980  
File No. 352

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

Dear Ms. Mergenovich:

Enclosed for recordation pursuant to Section 11303  
of the Interstate Commerce Act are counterparts of the  
following documents:

- one New Member*
1. Conditional Sale Agreement dated as of February 1, 1980 among each of National Steel Car Corporation, Limited and PACCAR, Inc. (the "Vendors"), Grand Trunk Western Railroad Company and Grand Trunk Corporation.
  2. Agreement and Assignment, dated as of February 1, 1980 in respect of the aforementioned Conditional Sale Agreement, between National Bank of Detroit as agent and assignee and each of the Vendors.

The addresses of the parties to the aforesaid agreements are:

Vendors:

National Steel Car Corporation, Limited  
P. O. Box 450  
Hamilton, Ontario L8N 3J4

PACCAR, Inc.  
1400 North Fourth Street  
Renton, Washington 98009

*Chin Anst -*  
*John Danielson*

Ms. Agatha L. Mergenovich  
Page Two

Vendee:

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

Assignee:

National Bank of Detroit  
Woodward Avenue at Fort Street  
Detroit, Michigan 48226

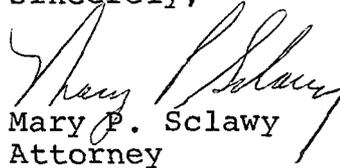
The equipment covered by the aforesaid agreements consists of 176 60' 9" 100-ton XL box cars, bearing road numbers GTW 375750 - 375925, both inclusive, and 15 cabooses, bearing road numbers GTW 79041 - 79055, both inclusive.

All said equipment bears the legend, "Ownership subject to a security agreement filed with the Interstate Commerce Commission."

Enclosed is our check for \$50 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger.

The undersigned is attorney for the Vendee mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Sincerely,

  
Mary P. Sclawy  
Attorney

MPS:dkh

Encs.

**Interstate Commerce Commission**  
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Mary P. Sclawy  
Grand Trunk Western RR Co.  
121 West Lafayette Boulevard  
Detroit, Michigan 48226

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 3/31/80 at 12:30PM, and assigned re-  
recording number (s). 11619

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

RECORDATION NO. 11619 0125

MAR 31 1980 - 12 22 PM

INTERSTATE COMMERCE COMMISSION

[CS&M 1698-032]

CONDITIONAL SALE AGREEMENT NO. 2

Dated as of February 1, 1980

Between Each of

NATIONAL STEEL CAR CORPORATION, LIMITED,  
and PACCAR INC.,  
Builders,

and

GRAND TRUNK WESTERN RAILROAD COMPANY,  
the Railroad,

and

GRAND TRUNK CORPORATION  
and  
DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY,  
Guarantors,

AGREEMENT AND ASSIGNMENT NO. 2

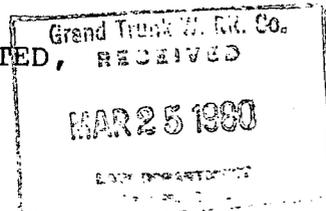
Dated as of February 1, 1980

Between Each of

NATIONAL STEEL CAR CORPORATION, LIMITED,  
and PACCAR INC.,

and

NATIONAL BANK OF DETROIT,  
as Agent



CONDITIONAL SALE AGREEMENT NO. 2

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CONDITIONAL SALE AGREEMENT NO. 2 dated as of February 1, 1980, between each of NATIONAL STEEL CAR CORPORATION, LIMITED, and PACCAR INC. (hereinafter called collectively the "Builders" or severally a "Builder", or collectively or severally the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof) and GRAND TRUNK WESTERN RAILROAD COMPANY (the "Railroad"), a Michigan and Indiana corporation and a wholly owned subsidiary of Grand Trunk Corporation, and GRAND TRUNK CORPORATION, a Delaware corporation, and DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY, a Maine corporation and a wholly owned subsidiary of Grand Trunk Corporation (the "Guarantors").

The Builders have severally agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (the "Equipment").

The Guarantors are 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 have 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 respective corporations described in Item 1 of Schedule A hereto, and any successor or successors for the time being to their 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 respective corpo-

rations (as to the units of Equipment to be constructed by such corporation and sold hereunder) named in Item 1 of Schedule A hereto, and any successor or successors for the time being to their manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder named in Item 1 of Schedule A hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule B hereto (such units of Equipment with respect to such Builder being hereinafter called its Equipment) at its plant set forth in said Schedule B and will sell and deliver to the Railroad, and the Railroad will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between such 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 and each unit of the Equipment will be new equipment.

ARTICLE 3. Inspection and Delivery. Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto or at such other place or places as the Railroad and such Builder may agree, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that no Builder shall have any obligation to deliver any unit of its 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.

Each Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder's 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 February 15, 1981, or such other date as the parties may agree upon, 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 or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a 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, 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 such 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 such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant. Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such Builder. Upon completion

of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the 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 such Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 8 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

On delivery of each such unit hereunder at the place specified for delivery, 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 or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including, without limitation, any increase pursuant to the presentation of a supplemental invoice as hereinafter provided, together with any duty, excise, levy or other tax imposed by the United States of America on the importation of the units of Equipment manufactured by National Steel Car Corporation, Limited ("Duty").

If the aggregate Purchase Price of Equipment for which settlement has been or is proposed to be made under this Agreement exceeds 125% of the principal amount then on deposit with the Vendor pursuant to a finance agreement under which the Vendor may be acting as agent for institutional investors named therein (the "Maximum Purchase Price"), 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 or Builders (and any assignee of the Builders) 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 such Builder's

security interest in such Equipment in a manner acceptable to such Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price, 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 such Builder.

For the purpose of making settlement, the Equipment of each Builder 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 such 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) on each Closing Date (as hereinafter defined) an amount equal to 20% of the aggregate Purchase Price of the Equipment being settled for on such Closing Date; and

(b) in 30 consecutive equal semiannual installments, as hereinafter provided, an amount equal to the Purchase Price of the Equipment less the amount paid with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments 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 upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder at least 10 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 each Builder that any preliminary invoice or invoices presented by Builder 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 (b) of the fourth paragraph of this Article 4 shall be payable semiannually on February 15 and August 15 in each year commencing on February 15, 1981, to and including August 15, 1995. The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such CSA Indebtedness was incurred at the rate of 11-7/8% per annum. Such interest shall be payable, to the extent accrued, on February 15 and August 15 in each year, commencing August 15, 1980.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after April 1, 1980, and prior to February 15, 1981, or such other date as the parties may agree) not more than 10 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 six business days prior to the Closing Date designated therein.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in 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 rate of 12-7/8% per annum 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.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts, except that each payment to be made to National Steel Car Corporation, Limited, specified in subparagraph (a) of the fourth paragraph hereof shall be made in Canadian dollars. For all purposes hereof, the United States dollar amount of CSA Indebtedness shall be finally and conclusively determined with respect to CSA

Indebtedness incurred on any Closing Date by reference to the United States dollar cost of Canadian funds acquired on such Closing Date by National Bank of Detroit, as Agent under the Finance Agreement dated as of January 2, 1980, as amended and restated as of February 1, 1980, after reduction for amounts, if any, paid by the Railroad to the Agent under the fourth paragraph of Paragraph 4 of such Finance Agreement. Except as provided in Article 9 hereof, 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 Guarantors. The Guarantors, for value received, hereby jointly and severally unconditionally guarantee 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 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 Guarantors 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 Guarantors hereby agree that their 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 Guarantors hereby waive 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 shall affect the obligations of the Guarantors hereunder. The Guarantors hereby agree that any rights that either of them may acquire by reason of performance of their obligations hereunder, by subrogation or otherwise, 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. Without in any way affecting the joint and several nature of the obligations of the Guarantors, in the event that Duluth, Winnipeg and Pacific Railway Company ("Duluth") shall be called upon to make any payment in respect of its obligation as Guarantor, it shall be entitled to 100% contribution in respect thereof from Grand Trunk Corporation, the other Guarantor.

In consideration of the undertaking of Duluth contained in this Article 5, the Railroad promises to pay to Duluth, on each date on which interest shall be payable hereunder on the CSA Indebtedness, a guarantee fee equal to 1/4% per annum computed on the outstanding principal amount of CSA Indebtedness from the later of the date incurred or the most recent date to which such guarantee fee shall have been paid. The Railroad's failure to pay the guarantee fee hereunder shall not in any way affect the guarantee or the obligations of the Guarantors to the Vendor hereunder, and the obligation of the Railroad to make such payments to Duluth shall not be secured by the Equipment or otherwise be entitled to any of the benefits of the Vendor granted hereunder. In the event of any default under this Agreement, the guarantee fee herein provided shall not be paid by the Railroad unless the CSA Indebtedness together with interest thereon has been paid in full.

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 nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. 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 its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as 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 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 Schedule B 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 or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the 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 and in the Other Agreement as defined in Item 3 of Schedule A hereto) of all units of the Equipment and all units of the railroad equipment covered by the Other Agreement having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 9 or Article 9 of the Other Agreement) hereunder shall exceed \$250,000 (or such lesser amount 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 Equipment 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 Equipment 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 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 CSA Indebtedness, in whole or in part, to prepay installments of CSA Indebtedness or toward not more than 80% of the cost of a unit or units of equipment of the same type as the Equipment which it

replaces first put into service no earlier than the date of this Agreement, 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. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment does not exceed 80% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service. In case any money is applied pursuant to this Article 9 to prepay indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the 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 CSA Indebtedness (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 CSA Indebtedness. The Casualty Value of each replacement unit 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 CSA Indebtedness (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 CSA Indebtedness (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 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 "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in any 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 para-

graph 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 equipment of the same type as the Equipment which it replaces first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 9 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed 80% of the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, 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 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) 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 thereby, 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 each 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 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, 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, 1981, 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 Article 8 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 use thereof 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 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, except that the Railroad will not assign or permit the assignment of any Equipment for service outside the United States and Canada.

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 a lien, charge or security interest on the Equipment, or 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 nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement; 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 that such claim would constitute a lien, charge or security interest on or in the Equipment equal or superior to the Vendor's interest therein adversely affecting 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 any 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; Each Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder, and in cases of designs,

systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each 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 of such Builder because of the use in or about the construction 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 operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder of such Equipment or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. Each 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 such 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 such Builder for use in or about the construction or operation of any of the Equipment of such Builder 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. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment of such Builder 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. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to such 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.

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

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. 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 Guarantors shall duly confirm that such action does not in any way affect their obligation hereunder, and provided such railroad company shall be a solvent Class I railroad with capital and surplus aggregating at least that of the Railroad immediately prior to such acquisition.

Neither Guarantor shall merge with any other corporation nor sell all or substantially all of its assets to any person unless (a) in the event of a merger, the surviving corporation (if other than such Guarantor) shall specifically assume by written instrument delivered to the Vendor the obligations of such Guarantor under this Agreement, and in the event of a sale of all or substantially all of the assets of such Guarantor, the transferee shall specifically assume by written instrument delivered to the Vendor the obligations of such 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 such instrument of assumption has been duly authorized, executed and delivered, and the obligations of such Guarantor under this Agreement shall have become legal, valid and binding obligations of such successor corporation or transferee.

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 Guarantors 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 any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its respective 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 a 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 Guarantors, 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 this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad and the Guarantors, respectively, of the notification of any such assignment, all payments thereafter to be made by the Railroad or the Guarantors 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 Guarantors 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 Guarantors expressly and severally represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes 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 any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture,

construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantors, as the case may be, by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective 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 Guarantors 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 certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of the Equipment of such Builder as provided in the instrument making such assignment, such 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 such Builder, enter into an appropriate written agreement with such Builder excluding from this Agreement those units of Equipment of such Builder for which the aggregate Purchase Price shall not have been received, but fully preserving such Builder's title to and security interest in such Equipment in a manner acceptable to such Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of the Equipment of such Builder, 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 prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due or (y) the highest rate permitted by law, whichever is less.

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 a Guarantor within five 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 a 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 a 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 such 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 a 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 such 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 such 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; or

(f) an event of default shall have occurred and be continuing under the Other Agreement as defined in Item 3 of Schedule A hereof;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantors 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 per annum specified 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 either Guarantor wherever situated. The Railroad and each 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 Guarantors 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 Guarantors 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 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 Guarantors 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 Guarantors 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 a 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 Guarantors shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad and the Guarantors 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 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad or a Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the 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. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

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

power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's or a 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 a 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 per annum set forth 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 either 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 its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

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 Guarantors 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 Guarantors 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 (i) to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, (ii) 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 and (iii) to be filed or recorded 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 from time to time do and perform any other act 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 each 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 deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

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

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

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

(d) to Duluth, Winnipeg and Pacific Railway Company at 72nd Avenue West and Raleigh, Duluth, Minnesota 55807, and

(e) 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,

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 or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor, the Railroad and the Guarantors.

ARTICLE 24. Law Governing. 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.

PACCAR INC.,

by



Vice President

[Corporate Seal]

Attest:



Assistant Secretary

NATIONAL STEEL CAR CORPORATION,  
LIMITED,

by

*[Signature]*  
Vice President

[Corporate Seal]

Attest:

*[Signature]*  
Assistant Secretary

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by

*[Signature]*  
Vice President

[Corporate Seal]

Attest:

*E. S. Intaine*  
Assistant Secretary

GRAND TRUNK CORPORATION,

by

*[Signature]*  
Vice President

[Corporate Seal]

Attest:

*E. S. Intaine*  
Assistant Secretary

DULUTH, WINNIPEG AND PACIFIC  
RAILWAY COMPANY,

by

*[Signature]*  
Vice President

[Corporate Seal]

Attest:

*E. S. Intaine*  
Assistant Secretary



STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this 25<sup>th</sup> day of March 1980, before me personally appeared P.E. *Intro*, to me personally known, who, being by me duly sworn, says that he is a Vice President of DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*J. A. Brewer*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

J. A. BREWER  
Notary Public, Wayne County, Mich.  
My Commission Expires Dec. 16, 1981

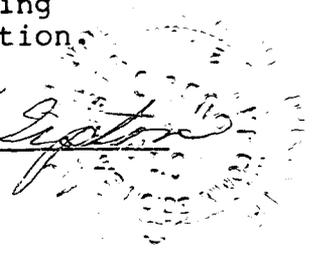


STATE OF WASHINGTON, )  
 ) ss.:  
COUNTY OF KING, )

On this 24<sup>th</sup> day of March 1980, before me personally appeared *J. J. Golley*, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR 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.

*Virginia J. Gator*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]





SCHEDULE A

to

Conditional Sale Agreement No. 2

- Item 1: (a) PACCAR INC., a Delaware corporation, 1400 North 4th Street, Renton, Washington 98055, with copy to General Counsel, PACCAR INC., P. O. Box 1518, Bellevue, Washington 98009.
- (b) National Steel Car Corporation, Limited, a Canadian corporation, at P. O. Box 450, Hamilton Ontario, L8N3J4.
- Item 2: (a) PACCAR INC. (hereinafter in this Item 2(a) called "PACCAR") warrants that its Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (the "Agreement") and, except in cases of articles and materials specified by the Railroad and not manufactured by PACCAR, warrants its Equipment to be free from defects in material and workmanship under normal use and service, the liability of PACCAR under this warranty being limited, as the Railroad may elect: (i) to repair the defects at PACCAR's plant; or (ii) to replacement of a defective part; or (iii) to the cost of repair or replacement according to the AAR Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange of Traffic. PACCAR shall be given reasonable opportunity to verify any claim of defects in workmanship or materials.

The foregoing warranty of PACCAR shall begin at the time of delivery of a unit of its Equipment to the Railroad and terminate two years after such delivery. PACCAR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole

and exclusive remedy and PACCAR will have no liability for lost profit or for indirect, incidental, consequential or commercial losses. This warranty is expressly in lieu of all other warranties expressed or implied on the part of PACCAR, except for the patent indemnification included in Article 15 of the Agreement, and PACCAR neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment, except as aforesaid.

PACCAR 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 its Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Railroad of any of its rights under this Item 2(a).

- (b) National Steel Car Corporation, Limited (hereinafter in this Item 2(b) called "National Steel"), warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (the "Agreement") and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by National Steel) and workmanship under normal use and service, National Steel's obligation under this Item 2(b) being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to National Steel with transportation charges prepaid and which National Steel's examination shall disclose to its satisfaction to have been thus defective.

The foregoing warranty of National Steel is expressly in lieu of all other warranties,

expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of National Steel, and National Steel neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except for the patent indemnification in Article 15 of the Agreement as aforesaid. It is further understood that in no event shall National Steel be liable for indirect or consequential damages of any kind.

National Steel 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 its 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(b).

Item 3: Conditional Sale Agreement No. 1 dated as of February 1, 1980, among General Motors Corporation (Electro-Motive Division) ("GM"), the Railroad and the Guarantors (the "Other Agreement"). The Other Agreement amends and restates the Conditional Sale Agreement dated as of January 2, 1980, among GM, the Railroad and Grand Trunk Corporation.

SCHEDULE B

Estimated  
Time of  
Delivery  
at Builder's  
Plant

<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>	
National Steel Car Corporation, Limited	60'9" 100-Ton XL box cars with 16'0" sliding doors and rub rails	M1809	Hamilton, Ontario	59	U.S.\$60,000 <sup>(1)</sup> (Can.\$69,768) <sup>(2)</sup>	U.S.\$3,540,000 <sup>(1)</sup> (Can.\$4,116,312) <sup>(2)</sup>	GIW 375750- 375808	March-May 1980
National Steel Car Corporation, Limited	60'9" 100-Ton XL box cars with 16'0" sliding doors and DF2 stub belts	M1809	Hamilton, Ontario	53	U.S.\$61,750 <sup>(1)</sup> (Can.\$71,802) <sup>(2)</sup>	U.S.\$3,272,750 <sup>(1)</sup> (Can.\$3,805,553) <sup>(2)</sup>	GIW 375809- 375861	March-May 1980
National Steel Car Corporation, Limited	60'9" 100-Ton XL box cars with 16'0" sliding doors and DF1 belts	M1809	Hamilton, Ontario	64	U.S.\$63,760 <sup>(1)</sup> (Can.\$74,128) <sup>(2)</sup>	U.S.\$4,008,000 <sup>(1)</sup> (Can.\$4,744,224) <sup>(2)</sup>	GIW 375862- 375925	March-May 1980
PACCAR Inc.	Cabooses	IC-2914	Kenton, Ohio	15	66,650	<u>999,750</u>	GIW 79041- 79055	August 1980
					Total U.S. Duty (3)	\$11,892,500 1,275,000		
					Total Purchase Price U.S.	<u>\$13,167,500</u>		

FOOTNOTES:

(1) Such Unit Base Price and Total Base Price are an estimate, expressed here in U.S. Dollars which assumes a Canadian dollar currency exchange rate at \$.86 at the time of settlement with National Steel.

(2) Such Unit Base Price and Total Base Price are an estimate, expressed here in Canadian funds. The CSA Indebtedness under this Agreement shall be payable in United States funds as specified in Article 4 hereof.

(3) Duty (defined in Article 4 of the CSA) has been calculated at 18% of the estimated cost of the non-U.S. manufactured contents of each National Steel Car Unit of Equipment.

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[CS&M 1698-083]

AGREEMENT AND ASSIGNMENT NO. 2

Dated as of February 1, 1980

Between each of

PACCAR INC.

and

NATIONAL STEEL CAR CORPORATION, LIMITED

and

NATIONAL BANK OF DETROIT,  
as Agent

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AGREEMENT AND ASSIGNMENT NO. 2

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AGREEMENT AND ASSIGNMENT NO. 2 dated as of February 1, 1980, between NATIONAL BANK OF DETROIT acting as Agent under a Finance Agreement dated as of the date hereof (said Finance Agreement being hereinafter called the "Finance Agreement" and said National Bank of Detroit, in its capacity as such Agent, being hereinafter called the "Assignee"), and each of PACCAR INC. and NATIONAL STEEL CAR CORPORATION, LIMITED (hereinafter collectively called the "Builders" and individually a "Builder").

The Builders, Grand Trunk Western Railroad Company, a Michigan and Indiana corporation and a wholly owned subsidiary of Grand Trunk Corporation (the "Railroad"), Grand Trunk Corporation, a Delaware corporation, and Duluth, Winnipeg and Pacific Railway Company, a Maine corporation and a wholly owned subsidiary of Grand Trunk Corporation (hereinafter collectively called the "Guarantors" and individually a "Guarantor"), have entered into a Conditional Sale Agreement No. 2 dated as of the date hereof (the "CSA"), covering the construction, sale and delivery, on the conditions therein set forth, by the Builders, severally, and the purchase by the Railroad of the equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment" and the Equipment constructed, sold and delivered by each Builder being hereinafter sometimes called "such Builder's Equipment" or "its Equipment");

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

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

(a) all the right, title and interest of such Builder in and to each unit of its Equipment when and as delivered to and accepted by the Railroad,

subject to payment by the Assignee to such Builder of the amount required to be paid to such Builder under Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver its Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraph (a) of the fourth paragraph of Article 4 thereof, and the last paragraph of Article 16 thereof and reimbursements for taxes paid or incurred by such Builder as provided in Article 6 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad or the Guarantors to such Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad or the Guarantors under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all such Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against such Builder for or on account of the failure of the Railroad or the Guarantors to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of such Builder to construct and deliver its Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 15 of the CSA or relieve the Railroad or the Guarantors from their respective obligations to such Builder contained or referred to in Articles 2, 3, 4, 6, 14, 15 and 16 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the CSA, all obligations of such Builder to the Railroad with respect to its Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against such Builder. In furtherance of the foregoing assignment and transfer, each Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for such Builder, to ask, demand, sue for, collect, receive and

enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad and the Guarantors with the terms and agreements on their part to be performed under the CSA No. 2, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. Each Builder agrees that it shall construct its Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the CSA set forth to be performed and complied with by such Builder. Each Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of its Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA); and each Builder further agrees that it will defend the title to each unit of its Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by such Builder under the CSA all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. No Builder will deliver any of its Equipment to the Railroad under the CSA until the filings referred to in Article 20 of the CSA have been effected (the respective Builders and their counsel being entitled to rely on advice from special counsel for the Assignee that such filings have been effected).

SECTION 3. Each Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the CSA, such Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by such Builder of any obligation with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by such Builder. Each Builder's

obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 16 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to such Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving such Builder the right, at such Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the appropriate Builder of any such liability or claim actually known to the Assignee and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim.

Each Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof (other than such as result from reassignment to such Builder in accordance with the last paragraph of Section 4 hereof).

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder whose Equipment shall be included in such Group (and to a United States Customs broker for Duty as defined in Article 4 of the CSA with respect to

any units of Equipment manufactured by National Steel Car Corporation, Limited) and to each Builder which shall submit a supplemental invoice for settlement on such Closing Date as contemplated in Article 4 of the CSA an amount equal to the portion of the Purchase Price of such Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments (which payment by the Assignee, in the case of National Steel Car Corporation, Limited, shall be in Canadian funds), provided that there shall have been delivered to the Assignee, as provided in Article 16 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and scope satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from such Builder to the Assignee transferring to the Assignee all right, title and interest of such Builder in such Builder's Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA such Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA and this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of such Builder's Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of such Builder for the units of such Builder's Equipment in such Group or any supplemental invoice (as contemplated by the last sentence of the fourth paragraph of said Article 4) accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and

delivery thereof by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad, the Guarantors and each Builder and is a legal, valid and binding instrument enforceable against the Railroad, the Guarantors and each Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by each Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by each Builder under this Assignment, (v) title to and a security interest in the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created or permitted by the CSA and this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Assignment, (vii) the CSA and this Assignment have been duly filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303, and 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 has been duly published, or adequate provision has been made therefor, in the Canada Gazette in accordance with said Section 86, and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia or Canada or province thereof and (viii) registration of the CSA and this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (d) above and stating that (i) the Railroad is a duly

organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) neither the execution and delivery of the Finance Agreement or the CSA nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter (as amended) or the by-laws (as amended) of the Railroad, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Railroad is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Railroad or upon the Equipment pursuant to the terms of any such agreement or instrument, other than the encumbrance created by the CSA in and to the Equipment;

(f) an opinion of counsel for each Guarantor, dated as of such Closing Date, to the effect set forth in clauses (i), (ii) and (vi) of subparagraph (d) above and stating that (i) such Guarantor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) neither the execution and delivery of the Finance Agreement or the CSA nor the consummation of the transactions therein contemplated nor the fulfillment of, or compliance with, the terms and provisions thereof will conflict with, or result in a breach of, any of the terms, conditions or provisions of the charter (as amended) or the by-laws (as amended) of the Guarantor, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which the Guarantor is now a party or by which it or its property may be bound, or constitute (with the giving of notice or the passage of time or both) a default thereunder, or result in the creation or imposition of any lien, charge, security interest or other encumbrance of any nature whatsoever upon any property of the Railroad or upon the Equipment pursuant to the terms of any such agreement or instrument, other than

the encumbrance created by the CSA in and to the Equipment;

(g) an opinion of counsel for each Builder whose Equipment is being delivered on such Closing Date, dated as of such Closing Date, to the effect set forth in clause (iv) of subparagraph (d) above and that title to the units of the Equipment in such Group is validly vested in the Assignee and at the time of delivery of such units to the Railroad under the CSA such title was free from all claims, liens, security interests and other encumbrances (other than those created or permitted by the CSA and this Assignment and stating that (i) such Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder and enforceable against such Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by such Builder and is a legal and valid instrument binding upon such Builder in accordance with its terms and (iv) the bill of sale referred to in subparagraph (a) of this Section 4 has been duly authorized, executed and delivered by such Builder and is valid and effective to transfer all right, title and interest of such Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the CSA and this Assignment) arising from, through or under such Builder;

(h) an opinion of Messrs. McCarthy & McCarthy, special Canadian counsel for the Railroad and the Guarantors, to the effect that (i) the CSA and this Assignment had been 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 has been duly published or adequate provision has been made therefor in the Canada Gazette in accordance with said Section 86 and no other filing or recordation is necessary for the protection of the rights of the Assignee in or to the equipment in Canada or any province thereof, (ii) no authorization or approval from any governmental ministry or agency or public regulatory body in Canada is neces-

sary for the due execution and delivery by the Railroad or the Guarantors of the CSA or this Assignment or for the validity or enforceability of any thereof and (iii) the provisions of the CSA and this Assignment do not contravene any applicable Canadian Law;

(i) a certificate of an officer of the Railroad and the Guarantors dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement No. 1 dated as of February 1, 1980, entered into among National Steel Car Corporation, Limited, PACCAR Inc., the Railroad and the Guarantors and the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment, and (iii) no taxes, assessments or governmental charges or levies are delinquent which would adversely affect the security interest of the Assignee in the Equipment;

(j) a receipt from each Builder whose Equipment is being delivered on said Closing Date for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to its Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad; and

(k) an invoice for Duty submitted by a United States Customs broker for units of Equipment manufactured by National Steel Car Corporation, Limited, or a receipt from such United States Customs broker if payment for such Duty has already been advanced by the Railroad;

provided, however, that with respect to Equipment for which a supplemental invoice is submitted by any Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c) and (j) of this Section 4.

In giving the opinions specified in subparagraphs (d), (e), (f) and (g) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Counsel for each of the parties may assume due authorization, execution and delivery of any document by the other parties in giving its opinion; in giving the opinions specified in subparagraphs (d) and (e) of this Section 4, counsel may rely on the opinion of counsel for such Builder as to title to such Builder's Equipment at the time of delivery thereof under the CSA; and in giving the opinions specified in said subparagraph (d) counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for such Builder or the opinion of counsel for the Railroad and the Guarantors as to such matter.

The Assignee shall not be required to make payment for the Equipment assigned hereunder:

(i) on any Closing Date, unless the Assignee shall have on deposit on such Closing Date pursuant to the terms of the Finance Agreement sufficient funds available thereunder to make such payment; or

(ii) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 17 of the CSA or if an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA.

In the event that the Assignee shall not make any such payment, on any scheduled Closing Date, as the same may from time to time be postponed, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee shall be deemed to have been reassigned to the Builder, without recourse, except that, if the Assignee shall not make payment in respect of a supplemental invoice for any Equipment after having made a payment in respect of a preliminary invoice for such Equipment, the Assignee shall retain all right, title and interest in and to such Equipment, but such Builder shall retain, as an unsecured obligation, the right to receive and

collect from the Railroad the payment due under such supplemental invoice.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad or the Guarantors thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. Each Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration and, assuming due authorization, execution and delivery by the other parties thereto, the CSA is a valid and existing agreement binding upon it in accordance with its terms and, at the time of the execution and delivery of this Assignment, it is, so far as such Builder is aware, in force without amendment thereto;

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

(c) agrees that subsequent to payment in full to such Builder of the Purchase Price for its Equipment and upon request of the Assignee, its successors and assigns, it will execute any and all instruments prepared and submitted to such Builder at the Railroad's expense which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of such Builder therein or in the Equipment of such Builder.

SECTION 7. The terms of this Assignment 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 the rights conferred as provided in Article 24 of the CSA.

SECTION 8. The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Builder", "such Builder" or other similar term, confers a right or imposes an obligation upon any Builder or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific Builder furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

SECTION 9. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad and the Guarantors, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment 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.

SECTION 10. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

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

NATIONAL BANK OF DETROIT,

by 

[CORPORATE SEAL]

**E. J. PECK TRUST OFFICER**

Attest:



~~Assistant Secretary~~

Vice President & Deputy Cashier



PACCAR INC.,

by *J. Kelley*  
Vice President

[CORPORATE SEAL]

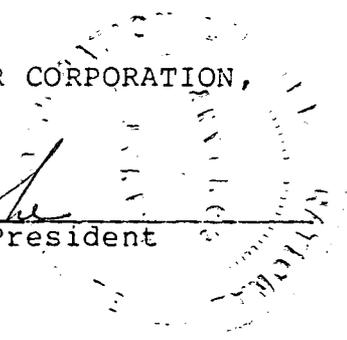
Attest:  
*Om Brawn*  
Assistant Secretary

NATIONAL STEEL CAR CORPORATION,  
LIMITED,

by *R. Cook*  
Vice President

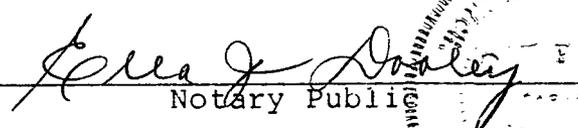
[CORPORATE SEAL]

Attest:  
*W. Richards*  
Assistant Secretary



STATE OF MICHIGAN, )  
 ) ss.:  
COUNTY OF WAYNE, )

On this <sup>25<sup>th</sup></sup> day of March 1980, before me personally appeared **R. J. PECK**, to me personally known, who, being by me duly sworn, says that he is **TRUST OFFICER** of NATIONAL BANK OF DETROIT, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation and that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

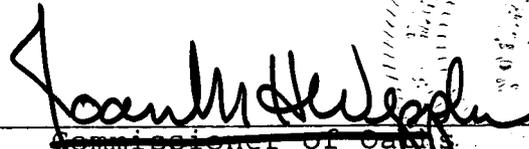
  
Notary Public

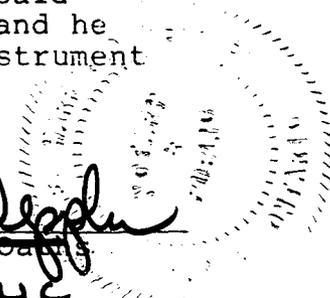


[NOTARIAL SEAL]

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

On this <sup>26<sup>th</sup></sup> day of March 1980, before me personally appeared **RICHARD W. COOKE**, to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL STEEL CAR CORPORATION, LIMITED, that one of the seals affixed to the foregoing instrument is the corporate seal of said Corporation, that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

  
Commissioner of Courts  
NOTARY PUBLIC



~~My Commission expires.~~

STATE OF WASHINGTON, )  
 ) ss.:  
COUNTY OF KING, )

On this 24th day of March 1980, before me personally appeared J. J. Galley, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACCAR 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.

Virginia T. Dapton  
Notary Public



[NOTARIAL SEAL]

My Commission expires:

1/24/81

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

GRAND TRUNK WESTERN RAILROAD COMPANY, GRAND TRUNK CORPORATION and DULUTH, WINNIPEG AND PACIFIC RAILWAY COMPANY, each hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment No. 2 as of February 1, 1980.

GRAND TRUNK WESTERN RAILROAD  
COMPANY,

by

  
\_\_\_\_\_  
Vice President

GRAND TRUNK CORPORATION,

by

  
\_\_\_\_\_  
Vice President

DULUTH, WINNIPEG AND PACIFIC  
RAILWAY COMPANY,

by

  
\_\_\_\_\_  
Vice President