



The Atchison, Topeka and Santa Fe Railway Company

A Santa Fe Industries Company

80 East Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/427-4900

11568

RECORDATION NO. Filed 1425 March 5, 1980

MAR 7 1980 -1 45 PM

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

INTERSTATE COMMERCE COMMISSION

No. **0-067A036**

Date **MAR 7 1980**

Fee \$ **50.00**

ICC Washington, D. C.

RECEIVED
MAR 7 1 45 PM '80
I.C.C. BR.
FEE OPERATION BR.

Re: The Atchison, Topeka and Santa Fe Railway Company Interim Lease Financing of Insulated Box Cars

Dear Ms. Mergenovich:

Enclosed herewith for filing with Interstate Commerce Commission, pursuant to 49 U.S.C. §11303 of the Interstate Commerce Act, are two executed counterparts of the following:

Agreement, dated as of February 1, 1980, between PACCAR, Inc. ("Builder"), and The Atchison, Topeka and Santa Fe Railway Company ("Railroad").

This Agreement constitutes an interim Conditional Sale Agreement for the following items of equipment, which are being purchased by the Railroad:

(54) 62' Insulated Box Cars, bearing Santa Fe Road Numbers 625378 to 625431, inclusive

A money order in the amount of \$50 is also enclosed in payment of the required recordation fee.

For the convenience of the parties, seven additional counterparts are also enclosed, which I should like to have returned bearing the recordation information.

The names and addresses of the parties to the Agreement are as follows:

Railroad (Buyer)

The Atchison, Topeka and Santa Fe Railway Company
80 East Jackson Blvd.
Chicago, Illinois 60604

Handwritten signature

Interstate Commerce Commission
Washington, D.C. 20423

3/7/80

OFFICE OF THE SECRETARY

Gus Svolos
The Atchison, Topeka And Santa Fe RYW. Co.
80 East Jackson Boulevard
Chicago, Illinois 60604

Dear **Sir:**

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **3/7/80** at **1:45pm**, and assigned re-
recording number (s). **11568**

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure (s)

11568

RECORDATION NO. Filed 1425

MAR 7 1980 -1 45 PM

INTERSTATE COMMERCE COMMISSION

AGREEMENT

Dated as of February 1, 1980

between

PACCAR, INC.

and

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY

Covering

54 62' Insulated Box Cars

THIS AGREEMENT, dated as of February 1, 1980, by and between PACCAR, INC., a Delaware corporation ("Builder"), and THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Delaware corporation ("Railroad");

WHEREAS, by the Builder's quotation dated September 8, 1978 and Railroad's purchase contract dated March 20, 1979, the Builder and Railroad heretofore entered into a contract (the "Contract") (a copy of which is made a part hereof by reference), and such addenda thereto and modifications thereof as may have been or may be agreed upon in writing between the Builder and Railroad; whereunder the Builder agreed to construct at its Renton, Washington plant and to deliver at Renton, Washington, and Railroad agreed to accept and pay for 58 62' insulated box cars to bear road numbers 625374 to 625431, inclusive;

WHEREAS, as contemplated by said letter agreement, Railroad intends to finance the purchase of the cars from the Builder pursuant to an Equipment Trust and a Conditional Sale Agreement. It is intended that cars numbered 625374 to 625377, inclusive, will be financed by Equipment Trust Series "P" with such financing now being effectively in place. Deliveries of the cars are scheduled to begin on or about March 6, 1980, and Railroad will not have established the Conditional Sales Agreement for cars numbered 625378 to 625431, inclusive, (the "Equipment"), by that time nor be in position to take such deliveries thereunder.

WHEREAS, Railroad anticipates that such financing arrangement will be established, however, on or before April 1, 1980.

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

The Builder will deliver to Railroad and Railroad will accept from the Builder the units of Equipment, constructed in accordance with the specifications referred to in the Contract and in accordance with such modifications thereof as may be agreed upon in writing between the parties, as of the date each of them is delivered to Railroad at Renton, Washington. Upon delivery of each unit of Equipment to the delivery point, a Railroad representative will execute a certificate of acceptance acknowledging inspection, acceptance, marking and delivery of such unit under this Agreement.

The Builder's indemnities concerning the Equipment with respect to patent infringement, its warranty of material and workmanship and the limitations of its liability with regard thereto are set forth in the Contract. Neither the inspection nor the acceptance by Railroad of any units of the Equipment under this Agreement shall be deemed a waiver or modification by the Railroad of any of its rights regarding such indemnities by the Builder.

The base price or prices per unit of the Equipment are set forth in the Contract. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

It is understood that this Agreement is intended and executed as an interim agreement pending consummation of permanent conditional sale financing now being arranged by the Railroad. In the event that this Agreement has not been superseded by mutually acceptable permanent financing agreements executed by the Builder and Railroad on or before April 1, 1980 then, notwithstanding any contrary provision or implication of this Agreement or the Contract:

- (i) The Equipment shall be settled for on one closing date, which closing date is hereby fixed as the 20th business day following the delivery of the last unit of Equipment to the Railroad; and
- (ii) The Railroad hereby agrees to pay in cash to the Builder on such closing date, at such place as the Builder may designate, the full Purchase Price of the Equipment.

If, as contemplated, this Agreement is superseded by mutually acceptable permanent financing agreements, the Railroad agrees to furnish to the Builder promptly thereafter an officer's certificate, certifying that during the term of this Agreement:

- (i) No lien, charge, claim, security interest or encumbrance (other than the security interest created by this Agreement) arising from, through or under the Railroad arose with respect to any unit of Equipment delivered hereunder;

- (ii) No damage or casualty has occurred with respect to any unit of Equipment delivered to Railroad hereunder or, if any such damage or casualty has occurred, identifying same and certifying that such damage or casualty has been fully repaired or, in lieu thereof that the Railroad has elected to exclude such unit from the permanent financing and to pay the Builder the full purchase price of such unit on the closing date herein specified; and
- (iii) No default in performance of any obligation of Railroad under this Agreement (not including the Contract) has occurred (or if any such default has occurred, it has been fully cured and is not continuing on the date of such certificate).

The Railroad also agrees to furnish to the Builder and any Assignee of this Agreement such other officer's certificates, opinions of counsel and written evidence as the Builder or such assignee may reasonably request in connection with its executing permanent financing arrangements.

The Builder 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. When and only when all the Railroad's obligations herein contained shall have been performed by the Railroad, the Builder, upon receipt of a Railroad request at that time, will execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad. Any and all additions 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 included in the term "Equipment" as used in this Agreement.

Railroad, without expense to the Builder, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under 49 U.S.C. Section 11303 prior to delivery of any unit of Equipment. In addition, Railroad shall do such other acts as may be required by law, or reasonably requested by the Builder, for the protection of the Builder's title to and interest in the Equipment.

Railroad agrees that it will permit no liens, charges, claims, security interests, or other encumbrances of any kind to attach to the Equipment; and that it will:

- (a) indemnify and save harmless the Builder from any and all claims, expenses or liabilities of whatsoever kind, and
- (b) pay any and all taxes, liens, charges and penalties that may accrue or be assessed or imposed upon the Equipment or the Builder,

because of the Builder's ownership or because of the delivery, use, operation, management or handling of the Equipment by Railroad during the term of this Agreement. Railroad's obligations contained in this paragraph shall survive the termination of this Agreement.

On delivery of each unit of Equipment 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. Railroad will, at its own expense, keep and maintain the Equipment in good order and running condition and will at its option forthwith repair, or promptly pay to Builder the Purchase Price in cash of, those units of Equipment which may be damaged or destroyed by any cause during the term of this Agreement. The Railroad will at all times, at its own expense, cause to be carried and maintained property and casualty insurance in respect of the Equipment, and public liability insurance, in amounts and against risks customarily insured against (taking into account self-insurance) by the Railroad in respect of similar equipment owned by it.

Prior to the delivery of each unit of Equipment to Railroad under this Agreement it will be numbered with a road number as hereinbefore indicated, and there shall be plainly, distinctly, permanently and conspicuously stencilled upon each side of each unit, in contemplation of said financing arrangement, the following legend (or a similar legend) in letters not less than one inch in height:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT
FILED WITH THE INTERSTATE COMMERCE COMMISSION"

Railroad hereby agrees to indemnify the Builder against any Railroad liability, loss or expense incurred by it as a result of the placing of the aforementioned markings on the Equipment.

In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed on any units of Equipment, Railroad shall immediately cause the same to be restored or replaced.

All or any of the rights, benefits or advantages of the Builder, including the right to receive the Purchase Price of the Equipment as provided in the Contract, may be assigned by the Builder and reassigned by any assignee at any time or from time to time.

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 80 East Jackson Boulevard, Chicago, Illinois 60604, Attention of President,
- (b) to a Builder, at 1400 N. 4th Street, Renton, Washington 98055, with a copy to General Counsel, PACCAR INC., P.O. Box 1518, Bellevue, Washington 98009, and
- (c) to any assignee of the Builder 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.

In the event that:

- (a) the Railroad shall fail to pay in full any indebtedness in respect of the purchase price of the Equipment as provided in this Agreement or shall fail to pay in full any other sum

payable by the Railroad as provided in this Agreement within ten days after the same shall have become due and payable; or

- (b) the Railroad shall, for more than 30 days after the Builder shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or of the Contract on its part to be kept or performed or to make provision satisfactory to the Builder for such compliance,

then at any time after the occurrence of such an event of default the Builder may, upon written notice to the Railroad, declare the entire indebtedness in respect of the purchase price of the Equipment immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness shall bear interest from the date of such declaration at the maximum lawful rate per annum.

At any time during the continuance of a declaration of default, the Builder shall be entitled to exercise any and all rights and remedies afforded a secured party under applicable law and as provided in Article 17 of the Conditional Sale Agreement dated as of January 15, 1975, recorded on February 6, 1975 under ICC Recordation No. 7822, among the Builder, certain other builders and the Railroad, the provisions of said Article 17 being incorporated herein by this reference and made a part hereof.

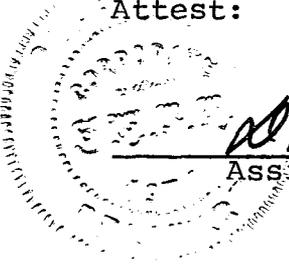
Railroad agrees with the Builder that the execution by the Builder of this Agreement or the delivery by the Builder to Railroad of the Equipment, as contemplated by this Agreement,

shall not relieve Railroad of its obligations to accept, take and pay for the Equipment in accordance with the terms of the Contract, or impair any of the Builder's rights under the Contract, as modified hereby.

Attest:

PACCAR, INC.

By:

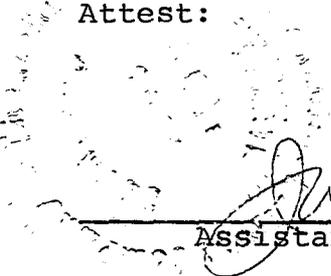

M. M. Brown
Assistant Secretary

[Signature]
Vice President

Attest:

THE ATCHISON, TOPEKA AND SANTA FE
RAILWAY COMPANY

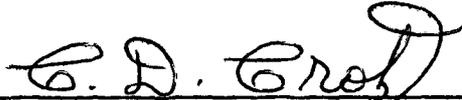
By:


A. R. Hayes
Assistant Secretary

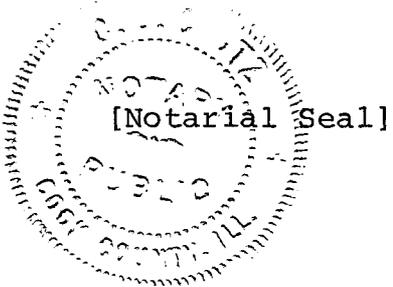
[Signature]
Executive Vice President

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

On this 5th day of March, 1980, before me personally appeared W. John Swartz, to me personally known, who, being by me duly sworn, says that he is Executive Vice President of THE ATCHISON, TOPEKA AND SANTA FE 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.

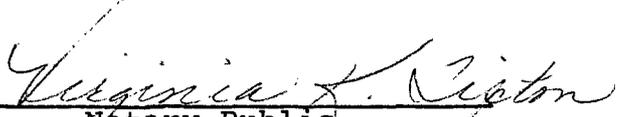


Notary Public
My Commission Expires January 14, 1981

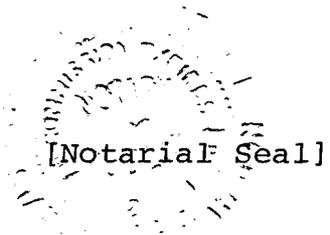


STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ^{6th} 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.



Notary Public



PACCAR Inc, a Delaware corporation (herein the "Builder"), in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Harris Trust and Savings Bank (herein the "Assignee"), as Agent and Assignee under an Agreement and Assignment (herein the "Assignment") dated as of March 1, 1980 among the Builder, certain other builders and the Assignee, by which the Builder assigned to the Assignee certain rights of the Builder under a Conditional Sale Agreement dated as of March 1, 1980 (herein the "Conditional Sale Agreement") among the Builder, certain other builders and The Atchison, Topeka and Santa Fe Railway Company (herein the "Vendee"), the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, transfer and set over unto the Assignee, its successors and assigns, the security interest of the Builder in and to the units of railroad equipment (herein the "Equipment") listed on Schedule "A" attached hereto and made a part hereof, which have been delivered by the Builder to the Vendee pursuant to the Conditional Sale Agreement.

RECORDATION NO. 11568-4
 JULY 1980
 FILED 1980
 COMMISSION

The Builder warrants to the Assignee and to the Vendee, their successors and assigns, that, at the time of delivery of such units of the Equipment to the Vendee under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the Assignment); and the Builder covenants that it will defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement.

The Builder hereby releases all claims, liens, security interests and other encumbrances arising from, through or under the Builder by reason of the agreement dated as of February 1, 1980 between the Builder and Vendee respecting the Equipment, filed with the ICC on March 7, 1980 under recordation No. 11568.

IN WITNESS WHEREOF, the Builder has caused this instrument to be executed in its name by its duly authorized officer and its corporate seal to be hereunto affixed, duly attested, this 22nd day of April, 1980.

PACCAR Inc

By: B.C. Jameson
 Sr. Vice President

ATTEST:

D.M. Brown
 Assistant Secretary

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

On this 22nd day of April, 1980, before me personally appeared B.C. Jameson, 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.

Priscilla White
 Notary Public

[Notarial Seal]

SCHEDULE A

(54) Box Cars with identifying marks as follows (inclusive)

ATSF 625378 through ATSF 625431