

RECORDATION NO. 12409  
NOV 13 1980-12 42 PM

RECORDATION NO. 12409-A

INTERSTATE COMMERCE COMMISSION

CRAVATH, SWAINE & MOORE

NOV 13 1980-12 42 PM  
INTERSTATE COMMERCE COMMISSION

ONE CHASE MANHATTAN PLAZA

NEW YORK, N. Y. 10005

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ICC Washington, D. C.

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COUNSEL  
MAURICE T. MOORE  
CARLYLE E. MAW

ROSWELL L. GILPATRICK  
ALBERT R. CONNELLY  
L. R. BRESLIN, JR.  
GEORGE B. TURNER  
FRANK H. DETWEILER  
GEORGE O. TYLER  
JOHN H. MORSE  
HAROLD R. MEDINA, JR.  
CHARLES R. LINTON  
WILLIAM B. MARSHALL  
ROYALL VICTOR  
ALLEN H. MERRILL  
4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-61-54  
TELEX: 290830  
33 THROMMORTON STREET  
LONDON, EC2N 2BR, ENGLAND  
TELEPHONE: 1-606-1421  
TELEX: 6614901

RALPH L. MCAFEE  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWART R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT  
GEORGE J. GILLESPIE, III  
RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS O. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL

FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID SOIES  
DAVID O. BROWNWOOD  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN  
ALLEN FINKELSON  
RONALD S. ROLFE  
JOSEPH R. SAHID  
PAUL C. SAUNDERS  
MARTIN L. SENZEL  
DOUGLAS D. BROADWATER  
ALAN C. STEPHENSON  
RICHARD L. HOFFMAN  
JOSEPH A. MULLINS  
MAX R. SHULMAN  
WILLIAM P. DICKEY  
STUART W. GOLD  
JOHN W. WHITE  
JOHN E. BEERBOWER

November 7, 1980

Louisville and Nashville Railroad Company  
Conditional Sale Financing Dated as of September 1, 1980  
12-1/2% Conditional Sale Indebtedness Due November 12, 1995

[CS&M Ref. 1413-019]

Dear Ms. Mergenovich:

Pursuant to 49 U.S.C. § 11303, I enclose herewith on behalf of Louisville and Nashville Railroad Company for filing and recordation counterparts of the following:

- (1) (a) Conditional Sale Agreement dated as of September 1, 1980, between each of Pullman Incorporated (Pullman Standard Division), The Chessie Corporation and PACCAR Inc, and Louisville and Nashville Railroad Company; and
- (b) Agreement and Assignment dated as of September 1, 1980, between Mercantile-Safe Deposit and Trust Company and each of Pullman Incorporated (Pullman Standard Division), The Chessie Corporation and PACCAR Inc.

The addresses of the parties to the aforementioned agreements are:

Builders:

Pullman Incorporated,  
(Pullman Standard Division),  
200 South Michigan Avenue,  
Chicago, Illinois 60604.

*Now Number*

*-A*

*Obtain the first - 10-1-80*

The Chessie Corporation,  
100 North Charles Street,  
Baltimore, Maryland 21201.

PACCAR Inc,  
777 106th Avenue, N.E. (5th Floor)  
Bellevue, Washington 98004.

Railroad:

Louisville and Nashville Railroad Company,  
908 West Broadway,  
Louisville, Kentucky 40203.

Agent:

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

The equipment covered by the aforementioned agreements appears in Schedule B attached hereto and also bearing 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 along with your fee receipt addressed to the undersigned.

Very truly yours,

*Joseph J. Basile, Jr. JJ.*  
Joseph J. Basile, Jr.  
As Agent for Louisville and  
Nashville Railroad Company

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

Encl.

SCHEDULE B  
to  
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</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>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	70-ton, 50'6" box cars	XL	Pullman No. 3877, dated 1/2/79, as amended	Bessemer, Ala.	75	\$46,000	\$3,450,000	GA 55400-55474	November 1980 at Bessemer, Ala.
Pullman Incorporated (Pullman Standard Division)	100-ton 4,750 cu. ft. covered hopper cars	LO	Pullman No. 3888, dated 1/10/79, as amended	Butler, Pa.	375	46,500	17,437,500	L&N 241950-242324	January 1981 at Butler, Pa.
The Hessie Corporation	100-ton coal hopper cars	HT	HT-51779, dated 6/21/79	Russell, Ky.	462	43,000	19,866,000	L&N 551100-551561	November 1980-January 1981 at Russell, Ky.
ACCAR Inc	70-ton, 60'9" single sheath box cars	XL	IC-2367, dated 12/14/78, as amended	Kenton, Ohio	35	71,000	2,485,000	L&N 410240-410274	December 1980 at Kenton, Ohio
							<u>\$43,238,500</u>		

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

OFFICE OF THE SECRETARY

Joseph J. Basile, Jr.  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N. Y. 10005

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 11/13/80 at 12:45PM, and assigned re-  
recording number(s). 12409, & 12409A

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

See 12318-A  
Partial Release

RECORDATION NO. 12409

NOV 13 1980 12 42 PM

INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1980

Between Each of

PULLMAN INCORPORATED (Pullman Standard Division)  
THE CHESSIE CORPORATION and PACCAR INC,

the Builders

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1980, between each of PULLMAN INCORPORATED (Pullman Standard Division), THE CHESSIE CORPORATION and PACCAR INC, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation.

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

The Railroad and the Builders of such Equipment have entered into Interim Documents providing, among other things, for the purchase of such Equipment by the Railroad, such Interim Documents being superseded by this Agreement.

In consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named 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 corporations (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 respective 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 corporation named in Item 1 of Schedule A hereto or its successor, such right or obliga-

tion shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The following terms shall, unless the context shall otherwise require, have the following meanings when used in this Agreement or the Assignment:

(a) this Agreement. This Conditional Sale Agreement dated as of September 1, 1980, between the Railroad and each of the Builders.

(b) Assignment. The Agreement and Assignment dated as of September 1, 1980, between the Agent and each of the Builders, substantially in the form annexed to the Finance Agreement as Exhibit B.

(c) Business days. Calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

(d) Casualty Occurrence. A Casualty Occurrence shall be deemed to occur with respect to a unit of Equipment if such unit 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.

(e) Casualty Value shall have the meaning set forth in the third paragraph of Article 8 of this Agreement.

(f) Certificate of Acceptance. The certificate to be executed by an inspector or authorized representative of the Railroad and delivered to the Builders pursuant to the penultimate paragraph of Article 3 of this Agreement.

(g) Closing Date shall have the meaning set forth in the seventh paragraph of Article 4 of this Agreement.

(h) CSA Indebtedness. The aggregate of install-

ments payable by the Railroad pursuant to subparagraph (b) of the fourth paragraph of Article 4 of this Agreement.

(i) Cut-Off Date. March 31, 1981.

(j) Declaration of Default shall have the meaning set forth in the first paragraph of Article 16 of this Agreement.

(k) Equipment. The new standard-gauge railroad equipment referred to and described in Schedule B to this Agreement, including any and all replacements thereof, and of parts thereof, additions thereto and substitutions therefor.

(l) Finance Agreement. The Finance Agreement dated as of September 1, 1980, among the Railroad, the Agent and the Investors.

(m) Group. Such number of units of Equipment of a Builder delivered to and accepted by the Railroad as the Railroad and Builder may agree to divide the Equipment of a Builder into for purposes of making settlement.

(n) ICC. Interstate Commerce Commission.

(o) Imposition shall have the meaning set forth in Article 5 of this Agreement.

(p) Interim Documents. Agreements between the Railroad and each of the Builders, entered into prior to the execution and delivery of this Agreement, providing for, among other things, the purchase of the Equipment by the Railroad.

(q) Investments. (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 domestic commercial banks in the United States of America having total undivided profits, capital and surplus in excess of \$100,000,000 in each case maturing in not more than six months from the date of such investment.

(r) Investors. The parties named in Schedule A to the Finance Agreement, their successors and assigns.

(s) Invoiced Purchase Price. The Purchase Price of a unit or units of Equipment as stated in the invoice or invoices presented therefor, including any supplemental invoice or invoices.

(t) Purchase Price. The base price or prices of the Equipment set forth in Schedule B hereto as increased or decreased by agreement between the Builder thereof and the Railroad including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in Article 4 of this Agreement.

(u) Railroad. Louisville and Nashville Railroad Company, a Kentucky corporation.

(v) Specifications. The specifications for the Equipment set forth or referred to in Schedule B of this Agreement, with such modifications thereof as may be agreed upon in writing between the Builder of such Equipment and the Railroad.

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. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and ICC 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 railroad 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 if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, collect, 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 Equipment hereunder (a) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (b) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing or (c) following receipt of written notice from the Vendor of its determination that there has been a material adverse change in the condition, financial or other, of the Railroad from that which existed on December 31, 1979.

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 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 the Cut-Off Date shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the 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 unit of Equipment is so excluded from this Agreement, 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 stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 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 is agreed to by the Builder thereof and the Railroad.

If the aggregate Purchase Price of the Equipment manufactured by Pullman Incorporated (Pullman Standard Division) should exceed \$23,005,290 or of the Equipment manufactured by The Chessie Corporation should exceed \$21,909,800 or of the Equipment manufactured by PACCAR Inc should exceed \$2,714,910, the Builder or Builders in question (and any assignee of such Builder or Builders) and the Railroad, unless waived by the Railroad, will

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, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price due each Builder under this Agreement to not more than (i) \$23,005,290 in the case of Equipment manufactured by Pullman Incorporated (Pullman Standard Division), or (ii) \$21,909,800 in the case of Equipment manufactured by The Chessie Corporation, or (iii) \$2,714,910 in the case of Equipment manufactured by PACCAR Inc, as the case may be, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and 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 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) the amount, if any, by which (x) the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, in respect of such Closing Date exceeds (y) the sum of \$47,630,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in an integral cent) annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable 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 for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate 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 agreed by such Builder that any prior preliminary invoice or invoices presented by such Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of such Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the Interim Documents.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable annually on November 12, in each year commencing on November 12, 1981, to and including November 12, 1995. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 12-1/2% per annum, and such interest shall be payable, to the extent accrued, on November 12, and May 12 in each year commencing May 12, 1981.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (not later than the Cut-Off Date), not more than ten business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental

invoice, and with respect to any Group of the Equipment, 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 five business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the amount then on deposit with the Vendor pursuant to the Finance Agreement.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/2% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, 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 as provided in Article 8 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 15 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. 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 interest therein 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 or interests 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, affect the title or interests 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 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests 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 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 8 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 and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 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 such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 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 7. 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 the name of the Vendor followed by the words "Agent, Owner", 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 and interests 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, obliterated 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 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall suffer a Casualty Occurrence, the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value of all units 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 8) hereunder shall exceed \$500,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering 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 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor, in whole or in part, to prepay installments of CSA Indebtedness or, in whole or in part, toward the cost of a unit or units of new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereof to replace units suffering a Casualty Occurrence; provided, however, that the Railroad shall direct the Vendor to purchase only such type of equipment as will cause the ratio of box cars to

hopper cars in which the Vendor holds security title, to secure the unpaid CSA Indebtedness to remain substantially 110:837. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due in the inverse order of maturity.

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 (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the fourth paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) 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 8) 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 Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding interests in any of the CSA Indebtedness then outstanding shall authorize such waiver in writing prior to, but not more than 30 days before, the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such 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 paragraph of Article 12 hereof and shall be taken initially 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 and to protect the title and interests of the Vendor in such replacement units. 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 in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of an Officer of the Railroad certifying that such replacement unit is new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereto and has been marked as required by the provisions of this Article 8, certifying the cost of such replacement unit and the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness as a result of the Vendor's purchase of such replacement unit or units and representing that, in selecting the replacement unit, the Railroad has kept the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness substantially 110:837; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except for the rights of the Railroad under this Agreement, that such unit has come under and is subject to this Agreement, that all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein, and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (or any successor provision providing similar benefits) with respect to such replacement unit.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such Investments as may be specified in such written direction. 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 8, and any excess of the proceeds of such sale over the cost of such Investment (including accrued interest thereon) shall, after the application of such money as hereinabove provided, 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 any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to

the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (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 17 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 a bill of sale (without recourse or warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained (i) insurance in respect of the Equipment at the time subject hereto 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; provided, however, that the Railroad may self-insure the Equipment in such amounts and against such risks to the extent that the Railroad self-insures other equipment of a similar nature and to the extent that such self-insurance is consistent with prudent railroad industry practice and (ii) public liability insurance with respect to third-party personal injury and property damage in such amounts and against such risks as the Railroad customarily insures against consistent with prudent railroad industry practice.

ARTICLE 9. 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.

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, ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that noncompliance with such laws and rules could materially and adversely affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, 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 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an accurate statement signed by an officer 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 12 months (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) 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 or repainted during the period covered by such statement, the numbers and markings required by Article 7 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 11. 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 units of 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 such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Railroad shall not be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 12. 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 or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests 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 title or interests 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.

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 13. 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 and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remains in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this

Agreement. 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 14. Patent Indemnities; Builders' 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 and 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 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 such 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 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment except to another railroad and, in any event, 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 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 such railroad company shall have net tangible assets and capital and surplus aggregating at least that of the Railroad immediately after such acquisition.

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, 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 warranties and indemni-

ties contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 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, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, 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 of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, 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 by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver 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 to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document 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 its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, 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 security interest in such Equipment in the 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 its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at 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.

ARTICLE 16. 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 or in the Finance Agreement within five business days after payment thereof shall be due hereunder; or

(b) except as otherwise set forth in subparagraph (e) of this paragraph, the Railroad shall have failed or refused to comply with any other covenant, agreement, term or provision of this Agreement, or of the Finance Agreement and such failure or refusal shall have continued for 30 days after the earlier of (a) notice to the Railroad by the Vendor of such failure or refusal or (b) actual knowledge by the Railroad of such failure or refusal; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad 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 under this Agreement shall not have been (and shall not continue to have been) 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, and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and any successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes or might result in, any modification of any obligation of the Railroad hereunder 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 Railroad's obligations 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 under this Agreement shall not have been (and shall not continue to have been) 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 for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(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;

(f) any representation or warranty made by the Railroad in this Agreement or in the Finance Agreement or in any document or certificate supplied or to be supplied by the Railroad pursuant to this Agreement, the Finance Agreement or the Assignment shall have been false when made; or

(g) at any time while any CSA Indebtedness is unpaid, the Vendor shall not be entitled to the benefit of 11 U.S.C. § 1168 (as now in effect or as herein-after amended) with respect to any units of the Equipment in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (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 of 13 1/2% per annum, 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 wherever situated. The Railroad 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 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 agreed by the Railroad 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 17. 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 17 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 and (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 to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. 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 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 17 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 by telegram or registered mail, addressed as provided in Article 21 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 17.

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 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 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 shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 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 17), 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 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 obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) or any comparable provision of any amendment thereto, 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 of 13 1/2% per annum. 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. 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 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) 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 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, to the full extent permitted by law, hereby waives 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 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed in accordance with 49 U.S.C. § 11303; and 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 purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) 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 Messrs. Cravath, Swaine & Moore, special 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 21. 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, (i) if delivered by hand, at 908 West Broadway, Louisville, Kentucky 40201 and (ii) if mailed, at P. O. Box 32290, Louisville, Kentucky 40232,

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

(c) 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 22. 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 (including the Interim Documents), 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 and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 (as now in effect or as hereinafter amended) 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.



THE CHESSIE CORPORATION,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

PACCAR INC,

by

[Corporate Seal]

Attest:

\_\_\_\_\_

COMMONWEALTH OF KENTUCKY, )  
 ) ss.:  
COUNTY OF JEFFERSON, )

On this 12<sup>th</sup> day of November 1980, before me personally appeared W. P. Shoemaker, to me personally known, who, being by me duly sworn, says that he is a Asst Vice President of LOUISVILLE AND NASHVILLE RAILROAD 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.

Marvin J. Parvey  
Notary Public

[Notarial Seal]

My Commission expires March 12, 1982.

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this \_\_\_\_\_ day of November 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), 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

[Notarial Seal]

My Commission expires \_\_\_\_\_



SCHEDULE A

to

Conditional Sale Agreement

- Item 1: (a) Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- (b) The Chessie Corporation, a Delaware corporation, 100 North Charles Street, Baltimore, Maryland 21201, attention of the Treasurer.
- (c) PACCAR INC, a Delaware corporation, P. O. Box 222, Kenton, Ohio 43326, with a copy to (i) Mrs. Monica Stover, PACCAR Inc, 1400 North 4th Street, Renton, Washington 98055, and (ii) Philip E. Gladfelter, Esq., PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- Item 2: (a) Pullman Incorporated (Pullman Standard Division) (hereinafter in this Item 2(a) called "Pullman") warrants that the 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 is attached (the "CSA") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by Pullman) and workmanship and design under normal use and service; Pullman's obligation under this Item 2(a) being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to Pullman with transportation charges prepaid and which examination by Pullman shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is

restricted to 25,000 miles or one year, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with any applicable Federal, state or local laws or regulations.

PULLMAN MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The rights of the Railroad under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profits 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 Pullman, except for its obligations and liabilities under Articles 2, 3 and 14 of the CSA. Pullman neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment.

Pullman further agrees with the Railroad that neither the inspection provided in Article 3 of the CSA, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(a).

- (b) THE CHESSIE CORPORATION (hereinafter in this Item 2(b) called "Chessie") 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 (hereinafter called the "CSA") 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 Chessie) and workmanship under normal use and service, Chessie'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 Chessie with transportation charges pre-paid and which Chessie's examination shall disclose to its satisfaction to have been thus defective. Warranty coverage on equipment running gear and contact points to the equipment structure is limited to one year or 50,000 miles, whichever occurs first. Equipment running gear and contact points to the equipment structure utilize components to AAR specifications to provide maximum equipment service life. The direct relationship between equipment mileage and service life limits the coverage of these components as specified in this paragraph.

The foregoing warranty of Chessie 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 Chessie, except for its obligations under Articles 2, 3 and 14 of the CSA and Chessie neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event shall Chessie be liable for indirect or consequential damages of any kind.

Chessie further agrees with the Railroad that neither the inspection as provided in Article 3 of the CSA, 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).

- (c) PACCAR INC (hereinafter in this Item 2(c) 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 (hereinafter called the "CSA") 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 its obligations under Articles 2, 3 and 14 of the CSA, 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 CSA, 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(c).

SCHEDULE B  
to  
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</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>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	70-ton, 50'6" box cars	XL	Pullman No. 3877, dated 1/2/79, as amended	Bessemer, Ala.	75	\$46,000	\$3,450,000	GA 55400-55474	November 1980 at Bessemer, Ala.
Pullman Incorporated (Pullman Standard Division)	100-ton 4,750 cu. ft. covered hopper cars	LO	Pullman No. 3888, dated 1/10/79, as amended	Butler, Pa.	375	46,500	17,437,500	L&N 241950-242324	January 1981 at Butler, Pa.
The Hessie Corporation	100-ton coal hopper cars	HT	HT-51779, dated 6/21/79	Russell, Ky.	462	43,000	19,866,000	L&N 551100-551561	November 1980-January 1981 at Russell, Ky.
ACCAR Inc	70-ton, 60'9" single sheath box cars	XL	IC-2867, dated 12/14/78, as amended	Kenton, Ohio	35	71,000	2,485,000	L&N 410240-410274	December 1980 at Kenton, Ohio
							<u>\$43,238,500</u>		

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CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1980

Between Each of

PULLMAN INCORPORATED (Pullman Standard Division)  
THE CHESSIE CORPORATION and PACCAR INC,

the Builders

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1980, between each of PULLMAN INCORPORATED (Pullman Standard Division), THE CHESSIE CORPORATION and PACCAR INC, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation.

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

The Railroad and the Builders of such Equipment have entered into Interim Documents providing, among other things, for the purchase of such Equipment by the Railroad, such Interim Documents being superseded by this Agreement.

In consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named 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 corporations (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 respective 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 corporation named in Item 1 of Schedule A hereto or its successor, such right or obliga-

tion shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The following terms shall, unless the context shall otherwise require, have the following meanings when used in this Agreement or the Assignment:

(a) this Agreement. This Conditional Sale Agreement dated as of September 1, 1980, between the Railroad and each of the Builders.

(b) Assignment. The Agreement and Assignment dated as of September 1, 1980, between the Agent and each of the Builders, substantially in the form annexed to the Finance Agreement as Exhibit B.

(c) Business days. Calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

(d) Casualty Occurrence. A Casualty Occurrence shall be deemed to occur with respect to a unit of Equipment if such unit 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.

(e) Casualty Value shall have the meaning set forth in the third paragraph of Article 8 of this Agreement.

(f) Certificate of Acceptance. The certificate to be executed by an inspector or authorized representative of the Railroad and delivered to the Builders pursuant to the penultimate paragraph of Article 3 of this Agreement.

(g) Closing Date shall have the meaning set forth in the seventh paragraph of Article 4 of this Agreement.

(h) CSA Indebtedness. The aggregate of install-

ments payable by the Railroad pursuant to subparagraph (b) of the fourth paragraph of Article 4 of this Agreement.

(i) Cut-Off Date. March 31, 1981.

(j) Declaration of Default shall have the meaning set forth in the first paragraph of Article 16 of this Agreement.

(k) Equipment. The new standard-gauge railroad equipment referred to and described in Schedule B to this Agreement, including any and all replacements thereof, and of parts thereof, additions thereto and substitutions therefor.

(l) Finance Agreement. The Finance Agreement dated as of September 1, 1980, among the Railroad, the Agent and the Investors.

(m) Group. Such number of units of Equipment of a Builder delivered to and accepted by the Railroad as the Railroad and Builder may agree to divide the Equipment of a Builder into for purposes of making settlement.

(n) ICC. Interstate Commerce Commission.

(o) Imposition shall have the meaning set forth in Article 5 of this Agreement.

(p) Interim Documents. Agreements between the Railroad and each of the Builders, entered into prior to the execution and delivery of this Agreement, providing for, among other things, the purchase of the Equipment by the Railroad.

(q) Investments. (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 domestic commercial banks in the United States of America having total undivided profits, capital and surplus in excess of \$100,000,000 in each case maturing in not more than six months from the date of such investment.

(r) Investors. The parties named in Schedule A to the Finance Agreement, their successors and assigns.

(s) Invoiced Purchase Price. The Purchase Price of a unit or units of Equipment as stated in the invoice or invoices presented therefor, including any supplemental invoice or invoices.

(t) Purchase Price. The base price or prices of the Equipment set forth in Schedule B hereto as increased or decreased by agreement between the Builder thereof and the Railroad including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in Article 4 of this Agreement.

(u) Railroad. Louisville and Nashville Railroad Company, a Kentucky corporation.

(v) Specifications. The specifications for the Equipment set forth or referred to in Schedule B of this Agreement, with such modifications thereof as may be agreed upon in writing between the Builder of such Equipment and the Railroad.

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. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and ICC 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 railroad 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 if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, collect, 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 Equipment hereunder (a) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (b) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing or (c) following receipt of written notice from the Vendor of its determination that there has been a material adverse change in the condition, financial or other, of the Railroad from that which existed on December 31, 1979.

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 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 the Cut-Off Date shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the 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 unit of Equipment is so excluded from this Agreement, 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 stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 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 is agreed to by the Builder thereof and the Railroad.

If the aggregate Purchase Price of the Equipment manufactured by Pullman Incorporated (Pullman Standard Division) should exceed \$23,005,290 or of the Equipment manufactured by The Chessie Corporation should exceed \$21,909,800 or of the Equipment manufactured by PACCAR Inc should exceed \$2,714,910, the Builder or Builders in question (and any assignee of such Builder or Builders) and the Railroad, unless waived by the Railroad, will

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, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price due each Builder under this Agreement to not more than (i) \$23,005,290 in the case of Equipment manufactured by Pullman Incorporated (Pullman Standard Division), or (ii) \$21,909,800 in the case of Equipment manufactured by The Chessie Corporation, or (iii) \$2,714,910 in the case of Equipment manufactured by PACCAR Inc, as the case may be, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and 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 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) the amount, if any, by which (x) the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, in respect of such Closing Date exceeds (y) the sum of \$47,630,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in an integral cent) annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable 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 for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate 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 agreed by such Builder that any prior preliminary invoice or invoices presented by such Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of such Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the Interim Documents.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable annually on November 12, in each year commencing on November 12, 1981, to and including November 12, 1995. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 12-1/2% per annum, and such interest shall be payable, to the extent accrued, on November 12, and May 12 in each year commencing May 12, 1981.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (not later than the Cut-Off Date), not more than ten business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental

invoice, and with respect to any Group of the Equipment, 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 five business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the amount then on deposit with the Vendor pursuant to the Finance Agreement.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/2% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, 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 as provided in Article 8 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 15 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. 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 interest therein 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 or interests 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, affect the title or interests 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 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests 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 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 8 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 and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 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 such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 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 7. 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 the name of the Vendor followed by the words "Agent, Owner", 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 and interests 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, obliterated 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 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall suffer a Casualty Occurrence, the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value of all units 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 8) hereunder shall exceed \$500,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering 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 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor, in whole or in part, to prepay installments of CSA Indebtedness or, in whole or in part, toward the cost of a unit or units of new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereof to replace units suffering a Casualty Occurrence; provided, however, that the Railroad shall direct the Vendor to purchase only such type of equipment as will cause the ratio of box cars to

hopper cars in which the Vendor holds security title, to secure the unpaid CSA Indebtedness to remain substantially 110:837. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due in the inverse order of maturity.

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 (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the fourth paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) 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 8) 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 Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding interests in any of the CSA Indebtedness then outstanding shall authorize such waiver in writing prior to, but not more than 30 days before, the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such 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 paragraph of Article 12 hereof and shall be taken initially 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 and to protect the title and interests of the Vendor in such replacement units. 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 in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of an Officer of the Railroad certifying that such replacement unit is new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereto and has been marked as required by the provisions of this Article 8, certifying the cost of such replacement unit and the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness as a result of the Vendor's purchase of such replacement unit or units and representing that, in selecting the replacement unit, the Railroad has kept the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness substantially 110:837; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except for the rights of the Railroad under this Agreement, that such unit has come under and is subject to this Agreement, that all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein, and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (or any successor provision providing similar benefits) with respect to such replacement unit.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such Investments as may be specified in such written direction. 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 8, and any excess of the proceeds of such sale over the cost of such Investment (including accrued interest thereon) shall, after the application of such money as hereinabove provided, 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 any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to

the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (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 17 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 a bill of sale (without recourse or warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained (i) insurance in respect of the Equipment at the time subject hereto 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; provided, however, that the Railroad may self-insure the Equipment in such amounts and against such risks to the extent that the Railroad self-insures other equipment of a similar nature and to the extent that such self-insurance is consistent with prudent railroad industry practice and (ii) public liability insurance with respect to third-party personal injury and property damage in such amounts and against such risks as the Railroad customarily insures against consistent with prudent railroad industry practice.

ARTICLE 9. 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.

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, ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that noncompliance with such laws and rules could materially and adversely affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, 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 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an accurate statement signed by an officer 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 12 months (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) 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 or repainted during the period covered by such statement, the numbers and markings required by Article 7 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 11. 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 units of 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 such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Railroad shall not be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 12. 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 or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests 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 title or interests 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.

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 13. 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 and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remains in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this

Agreement. 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 14. Patent Indemnities; Builders' 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 and 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 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 such 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 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment except to another railroad and, in any event, 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 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 such railroad company shall have net tangible assets and capital and surplus aggregating at least that of the Railroad immediately after such acquisition.

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, 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 warranties and indemni-

ties contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 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, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, 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 of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, 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 by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver 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 to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document 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 its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, 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 security interest in such Equipment in the 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 its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at 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.

ARTICLE 16. 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 or in the Finance Agreement within five business days after payment thereof shall be due hereunder; or

(b) except as otherwise set forth in subparagraph (e) of this paragraph, the Railroad shall have failed or refused to comply with any other covenant, agreement, term or provision of this Agreement, or of the Finance Agreement and such failure or refusal shall have continued for 30 days after the earlier of (a) notice to the Railroad by the Vendor of such failure or refusal or (b) actual knowledge by the Railroad of such failure or refusal; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad 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 under this Agreement shall not have been (and shall not continue to have been) 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, and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and any successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes or might result in, any modification of any obligation of the Railroad hereunder 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 Railroad's obligations 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 under this Agreement shall not have been (and shall not continue to have been) 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 for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(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;

(f) any representation or warranty made by the Railroad in this Agreement or in the Finance Agreement or in any document or certificate supplied or to be supplied by the Railroad pursuant to this Agreement, the Finance Agreement or the Assignment shall have been false when made; or

(g) at any time while any CSA Indebtedness is unpaid, the Vendor shall not be entitled to the benefit of 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) with respect to any units of the Equipment in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (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 of 13 1/2% per annum, 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 wherever situated. The Railroad 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 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 agreed by the Railroad 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 17. 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 17 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 and (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 to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. 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 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 17 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 by telegram or registered mail, addressed as provided in Article 21 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 17.

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 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 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 shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 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 17), 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 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 obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) or any comparable provision of any amendment thereto, 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 of 13 1/2% per annum. 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. 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 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) 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 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, to the full extent permitted by law, hereby waives 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 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed in accordance with 49 U.S.C. § 11303; and 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 purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) 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 Messrs. Cravath, Swaine & Moore, special 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 21. 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, (i) if delivered by hand, at 908 West Broadway, Louisville, Kentucky 40201 and (ii) if mailed, at P. O. Box 32290, Louisville, Kentucky 40232,

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

(c) 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 22. 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 (including the Interim Documents), 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 and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 (as now in effect or as hereinafter amended) 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 24. 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. It shall not be necessary that any counterpart be signed by all the parties hereto so long as each party shall sign one counterpart hereof which shall be effective upon delivery thereof to Messrs. Cravath, Swaine & Moore at their offices in New York, N. Y. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. 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 or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

LOUISVILLE AND NASHVILLE RAILROAD  
COMPANY,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Attesting Officer

PULLMAN INCORPORATED  
(Pullman Standard Division),

[Corporate Seal]

by

RC Smyler  
Vice President-Freight Unit

Attest:

William O. O'Rourke  
Assistant Secretary

THE CHESSIE CORPORATION,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_

PACCAR INC,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



COMMONWEALTH OF KENTUCKY, )  
 ) ss.:  
COUNTY OF JEFFERSON, )

On this \_\_\_\_\_ day of November 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of LOUISVILLE AND NASHVILLE RAILROAD 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

[Notarial Seal]

My Commission expires \_\_\_\_\_

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this *12<sup>th</sup>* day of November 1980, before me personally appeared *R. C. Snyder*, to me personally known, who, being by me duly sworn, says that he is a Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), 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.

*Donatha L. Stuckey*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires ~~MY~~ COMMISSION EXPIRES FEBRUARY 25, 1984



SCHEDULE A

to

Conditional Sale Agreement

- Item 1: (a) Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- (b) The Chessie Corporation, a Delaware corporation, 100 North Charles Street, Baltimore, Maryland 21201, attention of the Treasurer.
- (c) PACCAR INC, a Delaware corporation, P. O. Box 222, Kenton, Ohio 43326, with a copy to (i) Mrs. Monica Stover, PACCAR Inc, 1400 North 4th Street, Renton, Washington 98055, and (ii) Philip E. Gladfelter, Esq., PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- Item 2: (a) Pullman Incorporated (Pullman Standard Division) (hereinafter in this Item 2(a) called "Pullman") warrants that the 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 is attached (the "CSA") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by Pullman) and workmanship and design under normal use and service; Pullman's obligation under this Item 2(a) being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to Pullman with transportation charges prepaid and which examination by Pullman shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is

restricted to 25,000 miles or one year, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with any applicable Federal, state or local laws or regulations.

PULLMAN MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The rights of the Railroad under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profits 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 Pullman, except for its obligations and liabilities under Articles 2, 3 and 14 of the CSA. Pullman neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment.

Pullman further agrees with the Railroad that neither the inspection provided in Article 3 of the CSA, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(a).

- (b) THE CHESSIE CORPORATION (hereinafter in this Item 2(b) called "Chessie") 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 (hereinafter called the "CSA") 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 Chessie) and workmanship under normal use and service, Chessie'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 Chessie with transportation charges prepaid and which Chessie's examination shall disclose to its satisfaction to have been thus defective. Warranty coverage on equipment running gear and contact points to the equipment structure is limited to one year or 50,000 miles, whichever occurs first. Equipment running gear and contact points to the equipment structure utilize components to AAR specifications to provide maximum equipment service life. The direct relationship between equipment mileage and service life limits the coverage of these components as specified in this paragraph.

The foregoing warranty of Chessie 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 Chessie, except for its obligations under Articles 2, 3 and 14 of the CSA and Chessie neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event shall Chessie be liable for indirect or consequential damages of any kind.

Chessie further agrees with the Railroad that neither the inspection as provided in Article 3 of the CSA, 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).

- (c) PACCAR INC (hereinafter in this Item 2(c) 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 (hereinafter called the "CSA") 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 its obligations under Articles 2, 3 and 14 of the CSA, 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 CSA, 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(c).

SCHEDULE B  
to  
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</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>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	70-ton, 50'6" box cars	XL	Pullman No. 3877, dated 1/2/79, as amended	Bessemer, Ala.	75	\$46,000	\$3,450,000	GA 55400-55474	November 1980 at Bessemer, Ala.
Pullman Incorporated (Pullman Standard Division)	100-ton 4,750 cu. ft. covered hopper cars	LO	Pullman No. 3888, dated 1/10/79, as amended	Butler, Pa.	375	46,500	17,437,500	L&N 241950-242324	January 1981 at Butler, Pa.
The Chessie Corporation	100-ton coal hopper cars	HT	HT-51779, dated 6/21/79	Russell, Ky.	462	43,000	19,866,000	L&N 551100-551561	November 1980- January 1981 at Russell, Ky.
PACCAR Inc	70-ton, 60'9" single sheath box cars	XL	IC-2867, dated 12/14/78, as amended	Kenton, Ohio	35	71,000	2,485,000	L&N 410240-410274	December 1980 at Kenton, Ohio
							<u>\$43,238,500</u>		

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CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1980

Between Each of

PULLMAN INCORPORATED (Pullman Standard Division)  
THE CHESSIE CORPORATION and PACCAR INC,

the Builders

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1980, between each of PULLMAN INCORPORATED (Pullman Standard Division), THE CHESSIE CORPORATION and PACCAR INC, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation.

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

The Railroad and the Builders of such Equipment have entered into Interim Documents providing, among other things, for the purchase of such Equipment by the Railroad, such Interim Documents being superseded by this Agreement.

In consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named 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 corporations (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 respective 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 corporation named in Item 1 of Schedule A hereto or its successor, such right or obliga-

tion shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The following terms shall, unless the context shall otherwise require, have the following meanings when used in this Agreement or the Assignment:

(a) this Agreement. This Conditional Sale Agreement dated as of September 1, 1980, between the Railroad and each of the Builders.

(b) Assignment. The Agreement and Assignment dated as of September 1, 1980, between the Agent and each of the Builders, substantially in the form annexed to the Finance Agreement as Exhibit B.

(c) Business days. Calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

(d) Casualty Occurrence. A Casualty Occurrence shall be deemed to occur with respect to a unit of Equipment if such unit 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.

(e) Casualty Value shall have the meaning set forth in the third paragraph of Article 8 of this Agreement.

(f) Certificate of Acceptance. The certificate to be executed by an inspector or authorized representative of the Railroad and delivered to the Builders pursuant to the penultimate paragraph of Article 3 of this Agreement.

(g) Closing Date shall have the meaning set forth in the seventh paragraph of Article 4 of this Agreement.

(h) CSA Indebtedness. The aggregate of install-

ments payable by the Railroad pursuant to subparagraph (b) of the fourth paragraph of Article 4 of this Agreement.

(i) Cut-Off Date. March 31, 1981.

(j) Declaration of Default shall have the meaning set forth in the first paragraph of Article 16 of this Agreement.

(k) Equipment. The new standard-gauge railroad equipment referred to and described in Schedule B to this Agreement, including any and all replacements thereof, and of parts thereof, additions thereto and substitutions therefor.

(l) Finance Agreement. The Finance Agreement dated as of September 1, 1980, among the Railroad, the Agent and the Investors.

(m) Group. Such number of units of Equipment of a Builder delivered to and accepted by the Railroad as the Railroad and Builder may agree to divide the Equipment of a Builder into for purposes of making settlement.

(n) ICC. Interstate Commerce Commission.

(o) Imposition shall have the meaning set forth in Article 5 of this Agreement.

(p) Interim Documents. Agreements between the Railroad and each of the Builders, entered into prior to the execution and delivery of this Agreement, providing for, among other things, the purchase of the Equipment by the Railroad.

(q) Investments. (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 domestic commercial banks in the United States of America having total undivided profits, capital and surplus in excess of \$100,000,000 in each case maturing in not more than six months from the date of such investment.

(r) Investors. The parties named in Schedule A to the Finance Agreement, their successors and assigns.

(s) Invoiced Purchase Price. The Purchase Price of a unit or units of Equipment as stated in the invoice or invoices presented therefor, including any supplemental invoice or invoices.

(t) Purchase Price. The base price or prices of the Equipment set forth in Schedule B hereto as increased or decreased by agreement between the Builder thereof and the Railroad including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in Article 4 of this Agreement.

(u) Railroad. Louisville and Nashville Railroad Company, a Kentucky corporation.

(v) Specifications. The specifications for the Equipment set forth or referred to in Schedule B of this Agreement, with such modifications thereof as may be agreed upon in writing between the Builder of such Equipment and the Railroad.

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. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and ICC 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 railroad 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 if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, collect, 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 Equipment hereunder (a) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (b) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing or (c) following receipt of written notice from the Vendor of its determination that there has been a material adverse change in the condition, financial or other, of the Railroad from that which existed on December 31, 1979.

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 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 the Cut-Off Date shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the 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 unit of Equipment is so excluded from this Agreement, 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 stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 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 is agreed to by the Builder thereof and the Railroad.

If the aggregate Purchase Price of the Equipment manufactured by Pullman Incorporated (Pullman Standard Division) should exceed \$23,005,290 or of the Equipment manufactured by The Chessie Corporation should exceed \$21,909,800 or of the Equipment manufactured by PACCAR Inc should exceed \$2,714,910, the Builder or Builders in question (and any assignee of such Builder or Builders) and the Railroad, unless waived by the Railroad, will

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, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price due each Builder under this Agreement to not more than (i) \$23,005,290 in the case of Equipment manufactured by Pullman Incorporated (Pullman Standard Division), or (ii) \$21,909,800 in the case of Equipment manufactured by The Chessie Corporation, or (iii) \$2,714,910 in the case of Equipment manufactured by PACCAR Inc, as the case may be, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and 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 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) the amount, if any, by which (x) the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, in respect of such Closing Date exceeds (y) the sum of \$47,630,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in an integral cent) annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable 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 for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate 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 agreed by such Builder that any prior preliminary invoice or invoices presented by such Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of such Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the Interim Documents.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable annually on November 12, in each year commencing on November 12, 1981, to and including November 12, 1995. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 12-1/2% per annum, and such interest shall be payable, to the extent accrued, on November 12, and May 12 in each year commencing May 12, 1981.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (not later than the Cut-Off Date), not more than ten business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental

invoice, and with respect to any Group of the Equipment, 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 five business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the amount then on deposit with the Vendor pursuant to the Finance Agreement.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/2% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, 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 as provided in Article 8 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 15 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. 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 interest therein 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 or interests 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, affect the title or interests 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 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests 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 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 8 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 and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 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 such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 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 7. 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 the name of the Vendor followed by the words "Agent, Owner", 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 and interests 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, obliterated 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 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall suffer a Casualty Occurrence, the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value of all units 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 8) hereunder shall exceed \$500,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering 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 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor, in whole or in part, to prepay installments of CSA Indebtedness or, in whole or in part, toward the cost of a unit or units of new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereof to replace units suffering a Casualty Occurrence; provided, however, that the Railroad shall direct the Vendor to purchase only such type of equipment as will cause the ratio of box cars to

hopper cars in which the Vendor holds security title, to secure the unpaid CSA Indebtedness to remain substantially 110:837. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due in the inverse order of maturity.

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 (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the fourth paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) 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 8) 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 Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding interests in any of the CSA Indebtedness then outstanding shall authorize such waiver in writing prior to, but not more than 30 days before, the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such 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 paragraph of Article 12 hereof and shall be taken initially 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 and to protect the title and interests of the Vendor in such replacement units. 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 in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of an Officer of the Railroad certifying that such replacement unit is new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereto and has been marked as required by the provisions of this Article 8, certifying the cost of such replacement unit and the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness as a result of the Vendor's purchase of such replacement unit or units and representing that, in selecting the replacement unit, the Railroad has kept the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness substantially 110:837; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except for the rights of the Railroad under this Agreement, that such unit has come under and is subject to this Agreement, that all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein, and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (or any successor provision providing similar benefits) with respect to such replacement unit.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such Investments as may be specified in such written direction. 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 8, and any excess of the proceeds of such sale over the cost of such Investment (including accrued interest thereon) shall, after the application of such money as hereinabove provided, 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 any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to

the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (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 17 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 a bill of sale (without recourse or warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained (i) insurance in respect of the Equipment at the time subject hereto 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; provided, however, that the Railroad may self-insure the Equipment in such amounts and against such risks to the extent that the Railroad self-insures other equipment of a similar nature and to the extent that such self-insurance is consistent with prudent railroad industry practice and (ii) public liability insurance with respect to third-party personal injury and property damage in such amounts and against such risks as the Railroad customarily insures against consistent with prudent railroad industry practice.

ARTICLE 9. 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.

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, ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that noncompliance with such laws and rules could materially and adversely affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, 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 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an accurate statement signed by an officer 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 12 months (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) 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 or repainted during the period covered by such statement, the numbers and markings required by Article 7 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 11. 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 units of 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 such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Railroad shall not be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 12. 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 or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests 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 title or interests 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.

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 13. 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 and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remains in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this

Agreement. 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 14. Patent Indemnities; Builders' 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 and 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 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 such 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 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment except to another railroad and, in any event, 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 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 such railroad company shall have net tangible assets and capital and surplus aggregating at least that of the Railroad immediately after such acquisition.

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, 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 warranties and indemni-

ties contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 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, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, 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 of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, 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 by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver 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 to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document 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 its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, 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 security interest in such Equipment in the 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 its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at 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.

ARTICLE 16. 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 or in the Finance Agreement within five business days after payment thereof shall be due hereunder; or

(b) except as otherwise set forth in subparagraph (e) of this paragraph, the Railroad shall have failed or refused to comply with any other covenant, agreement, term or provision of this Agreement, or of the Finance Agreement and such failure or refusal shall have continued for 30 days after the earlier of (a) notice to the Railroad by the Vendor of such failure or refusal or (b) actual knowledge by the Railroad of such failure or refusal; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad 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 under this Agreement shall not have been (and shall not continue to have been) 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, and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and any successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes or might result in, any modification of any obligation of the Railroad hereunder 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 Railroad's obligations 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 under this Agreement shall not have been (and shall not continue to have been) 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 for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(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;

(f) any representation or warranty made by the Railroad in this Agreement or in the Finance Agreement or in any document or certificate supplied or to be supplied by the Railroad pursuant to this Agreement, the Finance Agreement or the Assignment shall have been false when made; or

(g) at any time while any CSA Indebtedness is unpaid, the Vendor shall not be entitled to the benefit of 11 U.S.C. § 1168 (as now in effect or as herein-after amended) with respect to any units of the Equipment in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (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 of 13 1/2% per annum, 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 wherever situated. The Railroad 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 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 agreed by the Railroad 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 17. 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 17 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 and (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 to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. 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 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 17 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 by telegram or registered mail, addressed as provided in Article 21 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 17.

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 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 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 shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 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 17), 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 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 obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) or any comparable provision of any amendment thereto, 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 of 13 1/2% per annum. 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. 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 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) 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 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, to the full extent permitted by law, hereby waives 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 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed in accordance with 49 U.S.C. § 11303; and 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 purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) 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 Messrs. Cravath, Swaine & Moore, special 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 21. 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, (i) if delivered by hand, at 908 West Broadway, Louisville, Kentucky 40201 and (ii) if mailed, at P. O. Box 32290, Louisville, Kentucky 40232,

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

(c) 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 22. 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 (including the Interim Documents), 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 and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 (as now in effect or as hereinafter amended) 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 24. 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. It shall not be necessary that any counterpart be signed by all the parties hereto so long as each party shall sign one counterpart hereof which shall be effective upon delivery thereof to Messrs. Cravath, Swaine & Moore at their offices in New York, N. Y. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. 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 or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

LOUISVILLE AND NASHVILLE RAILROAD  
COMPANY,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Attesting Officer

PULLMAN INCORPORATED  
(Pullman Standard Division),

[Corporate Seal]

by

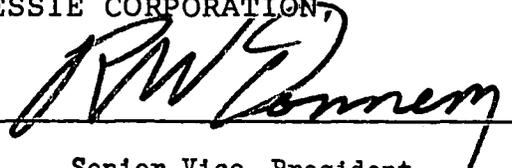
Attest:

\_\_\_\_\_  
Vice President-Freight Unit

\_\_\_\_\_  
Assistant Secretary

THE CHESSIE CORPORATION,

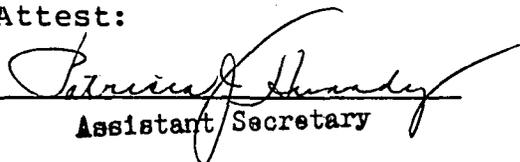
by

  
\_\_\_\_\_

Senior Vice - President

[Corporate Seal]

Attest:

  
\_\_\_\_\_  
Assistant Secretary

PACCAR INC,

by

\_\_\_\_\_

[Corporate Seal]

Attest:

\_\_\_\_\_



STATE OF OHIO                    , )  
  ) ss.:  
COUNTY OF CUYAHOGA           , )

On this 12TH day of November 1980, before me personally appeared R.W. DONNEM, to me personally known, who, being by me duly sworn, says that he is a SENIOR VICE-PRESIDENT of THE CHESSIE CORPORATION, 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.

*Clara Masuga*  
\_\_\_\_\_  
Notary Public

CLARA MASUGA, Notary Public  
State of Ohio - Cuyahoga County  
My Commission Expires April 21, 1984

[Notarial Seal]  
My Commission expires

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

On this                    day of November 1980, before me personally appeared                    , to me personally known, who, being by me duly sworn, says that he is a                    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

[Notarial Seal]  
My Commission expires

SCHEDULE A

to

Conditional Sale Agreement

- Item 1: (a) Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- (b) The Chessie Corporation, a Delaware corporation, 100 North Charles Street, Baltimore, Maryland 21201, attention of the Treasurer.
- (c) PACCAR INC, a Delaware corporation, P. O. Box 222, Kenton, Ohio 43326, with a copy to (i) Mrs. Monica Stover, PACCAR Inc, 1400 North 4th Street, Renton, Washington 98055, and (ii) Philip E. Gladfelter, Esq., PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- Item 2: (a) Pullman Incorporated (Pullman Standard Division) (hereinafter in this Item 2(a) called "Pullman") warrants that the 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 is attached (the "CSA") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by Pullman) and workmanship and design under normal use and service; Pullman's obligation under this Item 2(a) being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to Pullman with transportation charges prepaid and which examination by Pullman shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is

restricted to 25,000 miles or one year, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with any applicable Federal, state or local laws or regulations.

PULLMAN MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The rights of the Railroad under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profits 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 Pullman, except for its obligations and liabilities under Articles 2, 3 and 14 of the CSA. Pullman neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment.

Pullman further agrees with the Railroad that neither the inspection provided in Article 3 of the CSA, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(a).

- (b) THE CHESSIE CORPORATION (hereinafter in this Item 2(b) called "Chessie") 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 (hereinafter called the "CSA") 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 Chessie) and workmanship under normal use and service, Chessie'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 Chessie with transportation charges prepaid and which Chessie's examination shall disclose to its satisfaction to have been thus defective. Warranty coverage on equipment running gear and contact points to the equipment structure is limited to one year or 50,000 miles, whichever occurs first. Equipment running gear and contact points to the equipment structure utilize components to AAR specifications to provide maximum equipment service life. The direct relationship between equipment mileage and service life limits the coverage of these components as specified in this paragraph.

The foregoing warranty of Chessie 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 Chessie, except for its obligations under Articles 2, 3 and 14 of the CSA and Chessie neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event shall Chessie be liable for indirect or consequential damages of any kind.

Chessie further agrees with the Railroad that neither the inspection as provided in Article 3 of the CSA, 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).

- (c) PACCAR INC (hereinafter in this Item 2(c) 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 (hereinafter called the "CSA") 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 its obligations under Articles 2, 3 and 14 of the CSA, 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 CSA, 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(c).

SCHEDULE B  
to  
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</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>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	70-ton, 50'6" box cars	XL	Pullman No. 3877, dated 1/2/79, as amended	Bessemer, Ala.	75	\$46,000	\$3,450,000	GA 55400-55474	November 1980 at Bessemer, Ala.
Pullman Incorporated (Pullman Standard Division)	100-ton 4,750 cu. ft. covered hopper cars	LO	Pullman No. 3888, dated 1/10/79, as amended	Butler, Pa.	375	46,500	17,437,500	L&N 241950-242324	January 1981 at Butler, Pa.
The Chessie Corporation	100-ton coal hopper cars	HT	HT-51779, dated 6/21/79	Russell, Ky.	462	43,000	19,866,000	L&N 551100-551561	November 1980-January 1981 at Russell, Ky.
PACCAR Inc	70-ton, 60'9" single sheath box cars	XL	IC-2867, dated 12/14/78, as amended	Kenton, Ohio	35	71,000	2,485,000	L&N 410240-410274	December 1980 at Kenton, Ohio
							<u>\$43,238,500</u>		

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CONDITIONAL SALE AGREEMENT

Dated as of September 1, 1980

Between Each of

PULLMAN INCORPORATED (Pullman Standard Division)  
THE CHESSIE CORPORATION and PACCAR INC,

the Builders

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

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CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of September 1, 1980, between each of PULLMAN INCORPORATED (Pullman Standard Division), THE CHESSIE CORPORATION and PACCAR INC, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation.

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

The Railroad and the Builders of such Equipment have entered into Interim Documents providing, among other things, for the purchase of such Equipment by the Railroad, such Interim Documents being superseded by this Agreement.

In consideration of the mutual promises and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Assignment; Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the respective corporations named 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 corporations (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 respective 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 corporation named in Item 1 of Schedule A hereto or its successor, such right or obliga-

tion shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

The following terms shall, unless the context shall otherwise require, have the following meanings when used in this Agreement or the Assignment:

(a) this Agreement. This Conditional Sale Agreement dated as of September 1, 1980, between the Railroad and each of the Builders.

(b) Assignment. The Agreement and Assignment dated as of September 1, 1980, between the Agent and each of the Builders, substantially in the form annexed to the Finance Agreement as Exhibit B.

(c) Business days. Calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

(d) Casualty Occurrence. A Casualty Occurrence shall be deemed to occur with respect to a unit of Equipment if such unit 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.

(e) Casualty Value shall have the meaning set forth in the third paragraph of Article 8 of this Agreement.

(f) Certificate of Acceptance. The certificate to be executed by an inspector or authorized representative of the Railroad and delivered to the Builders pursuant to the penultimate paragraph of Article 3 of this Agreement.

(g) Closing Date shall have the meaning set forth in the seventh paragraph of Article 4 of this Agreement.

(h) CSA Indebtedness. The aggregate of install-

ments payable by the Railroad pursuant to subparagraph (b) of the fourth paragraph of Article 4 of this Agreement.

(i) Cut-Off Date. March 31, 1981.

(j) Declaration of Default shall have the meaning set forth in the first paragraph of Article 16 of this Agreement.

(k) Equipment. The new standard-gauge railroad equipment referred to and described in Schedule B to this Agreement, including any and all replacements thereof, and of parts thereof, additions thereto and substitutions therefor.

(l) Finance Agreement. The Finance Agreement dated as of September 1, 1980, among the Railroad, the Agent and the Investors.

(m) Group. Such number of units of Equipment of a Builder delivered to and accepted by the Railroad as the Railroad and Builder may agree to divide the Equipment of a Builder into for purposes of making settlement.

(n) ICC. Interstate Commerce Commission.

(o) Imposition shall have the meaning set forth in Article 5 of this Agreement.

(p) Interim Documents. Agreements between the Railroad and each of the Builders, entered into prior to the execution and delivery of this Agreement, providing for, among other things, the purchase of the Equipment by the Railroad.

(q) Investments. (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 domestic commercial banks in the United States of America having total undivided profits, capital and surplus in excess of \$100,000,000 in each case maturing in not more than six months from the date of such investment.

(r) Investors. The parties named in Schedule A to the Finance Agreement, their successors and assigns.

(s) Invoiced Purchase Price. The Purchase Price of a unit or units of Equipment as stated in the invoice or invoices presented therefor, including any supplemental invoice or invoices.

(t) Purchase Price. The base price or prices of the Equipment set forth in Schedule B hereto as increased or decreased by agreement between the Builder thereof and the Railroad including, without limitation, any increase pursuant to the presentation of a supplemental invoice as provided in Article 4 of this Agreement.

(u) Railroad. Louisville and Nashville Railroad Company, a Kentucky corporation.

(v) Specifications. The specifications for the Equipment set forth or referred to in Schedule B of this Agreement, with such modifications thereof as may be agreed upon in writing between the Builder of such Equipment and the Railroad.

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. The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and ICC 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 railroad 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 if said Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, collect, 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 Equipment hereunder (a) at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof, (b) if any event of default (as described in said Article 16), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred and be continuing or (c) following receipt of written notice from the Vendor of its determination that there has been a material adverse change in the condition, financial or other, of the Railroad from that which existed on December 31, 1979.

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 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 the Cut-Off Date shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the 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 unit of Equipment is so excluded from this Agreement, 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 stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; provided, however, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 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 is agreed to by the Builder thereof and the Railroad.

If the aggregate Purchase Price of the Equipment manufactured by Pullman Incorporated (Pullman Standard Division) should exceed \$23,005,290 or of the Equipment manufactured by The Chessie Corporation should exceed \$21,909,800 or of the Equipment manufactured by PACCAR Inc should exceed \$2,714,910, the Builder or Builders in question (and any assignee of such Builder or Builders) and the Railroad, unless waived by the Railroad, will

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, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price due each Builder under this Agreement to not more than (i) \$23,005,290 in the case of Equipment manufactured by Pullman Incorporated (Pullman Standard Division), or (ii) \$21,909,800 in the case of Equipment manufactured by The Chessie Corporation, or (iii) \$2,714,910 in the case of Equipment manufactured by PACCAR Inc, as the case may be, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement from the Builder thereof for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or by means of a conditional sale, equipment trust or other appropriate method of financing as the Railroad shall determine and 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 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) the amount, if any, by which (x) the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, in respect of such Closing Date exceeds (y) the sum of \$47,630,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 15, result in an amount ending in an integral cent) annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable 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 for an estimated Purchase Price (as evidenced by the words "Interim Invoice" written on the face of such invoice), subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the appropriate 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 agreed by such Builder that any prior preliminary invoice or invoices presented by such Builder shall be in an amount not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of such Builder shall have been delivered, accepted and settled for, but prior to the Repayment Date the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by a Builder after the Repayment Date, it shall be paid in cash by the Railroad to such Builder in accordance with the terms of the Interim Documents.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the fourth paragraph of this Article 4 shall be payable annually on November 12, in each year commencing on November 12, 1981, to and including November 12, 1995. The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 12-1/2% per annum, and such interest shall be payable, to the extent accrued, on November 12, and May 12 in each year commencing May 12, 1981.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (not later than the Cut-Off Date), not more than ten business days following presentation by the Builder of the Equipment in such Group to the Railroad of the invoice or a supplemental

invoice, and with respect to any Group of the Equipment, 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 five business days prior to the Closing Date designated therein; provided, however, that the aggregate of the Invoiced Purchase Prices of all Equipment settled for pursuant to this Agreement on any Closing Date shall not exceed the amount then on deposit with the Vendor pursuant to the Finance Agreement.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 13-1/2% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, 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 as provided in Article 8 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 15 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. 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 interest therein 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 or interests 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, affect the title or interests 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 6. Title to the Equipment. The Vendor shall and hereby does retain its title and interests 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 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 8 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 and releasing its title to and interests therein to the Railroad, or upon its order, free of all claims, liens, interests and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 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 such transfer and release and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 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 7. 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 the name of the Vendor followed by the words "Agent, Owner", 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 and interests 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, obliterated 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 8. Casualty Occurrences; Insurance. In the event that any unit of the Equipment shall suffer a Casualty Occurrence, the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value of all units 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 8) hereunder shall exceed \$500,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering 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 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor, in whole or in part, to prepay installments of CSA Indebtedness or, in whole or in part, toward the cost of a unit or units of new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereof to replace units suffering a Casualty Occurrence; provided, however, that the Railroad shall direct the Vendor to purchase only such type of equipment as will cause the ratio of box cars to

hopper cars in which the Vendor holds security title, to secure the unpaid CSA Indebtedness to remain substantially 110:837. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce each installment of CSA Indebtedness thereafter falling due in the inverse order of maturity.

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 (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the fourth paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) 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 8) 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 Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding interests in any of the CSA Indebtedness then outstanding shall authorize such waiver in writing prior to, but not more than 30 days before, the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such 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 paragraph of Article 12 hereof and shall be taken initially 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 and to protect the title and interests of the Vendor in such replacement units. 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 in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of an Officer of the Railroad certifying that such replacement unit is new standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives and other than cabooses) of the type set forth in Schedule B hereto and has been marked as required by the provisions of this Article 8, certifying the cost of such replacement unit and the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness as a result of the Vendor's purchase of such replacement unit or units and representing that, in selecting the replacement unit, the Railroad has kept the ratio of box cars to hopper cars to which the Vendor holds security title to secure the unpaid CSA Indebtedness substantially 110:837; and

(2) an opinion of counsel for the Railroad that security title to such replacement unit is vested in the Vendor, free and clear from all claims, liens, security interests and other encumbrances except for the rights of the Railroad under this Agreement, that such unit has come under and is subject to this Agreement, that all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein, and that, in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code, the Vendor shall have the benefits of 11 U.S.C. § 1168 (or any successor provision providing similar benefits) with respect to such replacement unit.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such Investments as may be specified in such written direction. 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 8, and any excess of the proceeds of such sale over the cost of such Investment (including accrued interest thereon) shall, after the application of such money as hereinabove provided, 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 any unit of the Equipment is removed for repairs other than running repairs or becomes unsuitable or not necessary for continued use by the Railroad in the Railroad's business or operations, such occurrence shall, upon the election of the Railroad evidenced by written notice to the Vendor, constitute a Casualty Occurrence subject to the provisions of this Article 8; provided, however, that the Railroad shall direct any money paid to

the Vendor in respect thereof to be applied only toward the cost of replacement equipment and not to prepay any installment of CSA Indebtedness.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (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 17 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 a bill of sale (without recourse or warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained (i) insurance in respect of the Equipment at the time subject hereto 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; provided, however, that the Railroad may self-insure the Equipment in such amounts and against such risks to the extent that the Railroad self-insures other equipment of a similar nature and to the extent that such self-insurance is consistent with prudent railroad industry practice and (ii) public liability insurance with respect to third-party personal injury and property damage in such amounts and against such risks as the Railroad customarily insures against consistent with prudent railroad industry practice.

ARTICLE 9. 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.

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, ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that noncompliance with such laws and rules could materially and adversely affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration or replacement of or addition to any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, 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 10. Reports and Inspections. On or before March 31 in each year, commencing with the year 1981, the Railroad shall furnish to the Vendor an accurate statement signed by an officer 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 12 months (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) 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 or repainted during the period covered by such statement, the numbers and markings required by Article 7 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 11. 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 units of 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 such units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Railroad shall not be entitled to assign the Equipment for use or service outside of the United States of America except in normal interchange.

ARTICLE 12. 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 or in the Equipment, or any unit thereof, equal or superior to the Vendor's title and interests 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 title or interests 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.

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 13. 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 and interests in the Equipment, the use and operation thereof by the Railroad during the period when said title and interests remains in the Vendor or the transfer of said title and interests in the Equipment by the Vendor pursuant to any of the provisions of this

Agreement. 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 14. Patent Indemnities; Builders' 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 and 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 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 such 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 15. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment except to another railroad and, in any event, 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 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 such railroad company shall have net tangible assets and capital and surplus aggregating at least that of the Railroad immediately after such acquisition.

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, 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 warranties and indemni-

ties contained or referred to in Article 14 hereof and Schedule A hereto, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 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, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, 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 of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement to the Vendor shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, 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 by a Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver 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 to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document 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 its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, 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 security interest in such Equipment in the 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 its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at 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.

ARTICLE 16. 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 or in the Finance Agreement within five business days after payment thereof shall be due hereunder; or

(b) except as otherwise set forth in subparagraph (e) of this paragraph, the Railroad shall have failed or refused to comply with any other covenant, agreement, term or provision of this Agreement, or of the Finance Agreement and such failure or refusal shall have continued for 30 days after the earlier of (a) notice to the Railroad by the Vendor of such failure or refusal or (b) actual knowledge by the Railroad of such failure or refusal; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as said Title 11 may be hereafter amended, shall be filed by or against the Railroad 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 under this Agreement shall not have been (and shall not continue to have been) 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, and otherwise in accordance with the provisions of 11 U.S.C. § 1168, and any successor provision, as the same may be hereafter amended; or

(d) any other proceedings shall be commenced by or against the Railroad for any relief which includes or might result in, any modification of any obligation of the Railroad hereunder 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 Railroad's obligations 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 under this Agreement shall not have been (and shall not continue to have been) 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 for its property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced;

(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;

(f) any representation or warranty made by the Railroad in this Agreement or in the Finance Agreement or in any document or certificate supplied or to be supplied by the Railroad pursuant to this Agreement, the Finance Agreement or the Assignment shall have been false when made; or

(g) at any time while any CSA Indebtedness is unpaid, the Vendor shall not be entitled to the benefit of 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) with respect to any units of the Equipment in the event of the filing of a petition for the reorganization of the Railroad pursuant to Title 11 of the United States Code;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (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 of 13 1/2% per annum, 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 wherever situated. The Railroad 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 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 agreed by the Railroad 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 17. 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 17 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 and (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 to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. 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 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 17 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 by telegram or registered mail, addressed as provided in Article 21 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 17.

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 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 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 shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 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 17), 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 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 obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in 11 U.S.C. § 1168 (as now in effect or as hereinafter amended) or any comparable provision of any amendment thereto, 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 of 13 1/2% per annum. 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. 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 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) 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 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, to the full extent permitted by law, hereby waives 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 19. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed in accordance with 49 U.S.C. § 11303; and 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 purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builders) 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 Messrs. Cravath, Swaine & Moore, special 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 21. 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, (i) if delivered by hand, at 908 West Broadway, Louisville, Kentucky 40201 and (ii) if mailed, at P. O. Box 32290, Louisville, Kentucky 40232,

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

(c) 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 22. 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 (including the Interim Documents), 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 and the Railroad.

ARTICLE 23. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 (as now in effect or as hereinafter amended) 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 24. 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. It shall not be necessary that any counterpart be signed by all the parties hereto so long as each party shall sign one counterpart hereof which shall be effective upon delivery thereof to Messrs. Cravath, Swaine & Moore at their offices in New York, N. Y. Each Builder shall be bound hereunder notwithstanding the failure of any other Builder to execute and deliver this Agreement or to perform its obligations hereunder. 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 or other persons, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

LOUISVILLE AND NASHVILLE RAILROAD  
COMPANY,

[Corporate Seal]

by

Attest:

\_\_\_\_\_  
Attesting Officer

PULLMAN INCORPORATED  
(Pullman Standard Division),

[Corporate Seal]

by

\_\_\_\_\_  
Vice President-Freight Unit

Attest:

\_\_\_\_\_  
Assistant Secretary

THE CHESSIE CORPORATION,

by \_\_\_\_\_

[Corporate Seal]

Attest:  
\_\_\_\_\_

PACCAR INC,

by

 \_\_\_\_\_

[Corporate Seal]

Attest:

  
\_\_\_\_\_

COMMONWEALTH OF KENTUCKY, )  
 ) ss.:  
COUNTY OF JEFFERSON, )

On this            day of November 1980, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is a            of LOUISVILLE AND NASHVILLE RAILROAD 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.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF ILLINOIS, )  
 ) ss.:  
COUNTY OF COOK, )

On this            day of November 1980, before me personally appeared           , to me personally known, who, being by me duly sworn, says that he is a Vice President-Freight Unit of PULLMAN INCORPORATED (Pullman Standard Division), 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.

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Notary Public

[Notarial Seal]

My Commission expires

STATE OF )  
 ) ss.:  
COUNTY OF )

On this \_\_\_\_\_ day of November 1980, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of THE CHESSIE CORPORATION, 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

[Notarial Seal]

My Commission expires \_\_\_\_\_

STATE OF *Washington* )  
 ) ss.:  
COUNTY OF *Ferry* )

On this *10th* day of November 1980, before me personally appeared *G. 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. Lydon*  
\_\_\_\_\_  
Notary Public

[Notarial Seal]

My Commission expires *1/24/81*

SCHEDULE A

to

Conditional Sale Agreement

- Item 1: (a) Pullman Incorporated (Pullman Standard Division), a Delaware corporation, 200 South Michigan Avenue, Chicago, Illinois 60604.
- (b) The Chessie Corporation, a Delaware corporation, 100 North Charles Street, Baltimore, Maryland 21201, attention of the Treasurer.
- (c) PACCAR INC, a Delaware corporation, P. O. Box 222, Kenton, Ohio 43326, with a copy to (i) Mrs. Monica Stover, PACCAR Inc, 1400 North 4th Street, Renton, Washington 98055, and (ii) Philip E. Gladfelter, Esq., PACCAR Inc, P. O. Box 1518, Bellevue, Washington 98009.
- Item 2: (a) Pullman Incorporated (Pullman Standard Division) (hereinafter in this Item 2(a) called "Pullman") warrants that the 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 is attached (the "CSA") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by Pullman) and workmanship and design under normal use and service; Pullman's obligation under this Item 2(a) being limited to making good at its plant any part or parts of any unit of Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to Pullman with transportation charges prepaid and which examination by Pullman shall disclose to its satisfaction to have been thus defective; provided, however, that this warranty will be subject to the following limitations: (i) warranty coverage on running gear and contact points to unit structure is

restricted to 25,000 miles or one year, whichever occurs first; and (ii) normal use and service is deemed to require inspection, adjustment, maintenance and compliance with any applicable Federal, state or local laws or regulations.

PULLMAN MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. The rights of the Railroad under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for lost profits 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 Pullman, except for its obligations and liabilities under Articles 2, 3 and 14 of the CSA. Pullman neither assumes nor authorizes any person to assume for it any other warranty liability in connection with the construction and delivery of its Equipment.

Pullman further agrees with the Railroad that neither the inspection provided in Article 3 of the CSA, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 2(a).

- (b) THE CHESSIE CORPORATION (hereinafter in this Item 2(b) called "Chessie") 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 (hereinafter called the "CSA") 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 Chessie) and workmanship under normal use and service, Chessie'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 Chessie with transportation charges pre-paid and which Chessie's examination shall disclose to its satisfaction to have been thus defective. Warranty coverage on equipment running gear and contact points to the equipment structure is limited to one year or 50,000 miles, whichever occurs first. Equipment running gear and contact points to the equipment structure utilize components to AAR specifications to provide maximum equipment service life. The direct relationship between equipment mileage and service life limits the coverage of these components as specified in this paragraph.

The foregoing warranty of Chessie 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 Chessie, except for its obligations under Articles 2, 3 and 14 of the CSA and Chessie neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid. It is further understood that in no event shall Chessie be liable for indirect or consequential damages of any kind.

Chessie further agrees with the Railroad that neither the inspection as provided in Article 3 of the CSA, 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).

- (c) PACCAR INC (hereinafter in this Item 2(c) 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 (hereinafter called the "CSA") 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 its obligations under Articles 2, 3 and 14 of the CSA, 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 CSA, 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(c).

SCHEDULE B  
to  
Conditional Sale Agreement

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</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>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Pullman Incorporated (Pullman Standard Division)	70-ton, 50'6" box cars	XL	Pullman No. 3877, dated 1/2/79, as amended	Bessemer, Ala.	75	\$46,000	\$3,450,000	GA 55400-55474	November 1980 at Bessemer, Ala.
Pullman Incorporated (Pullman Standard Division)	100-ton 4,750 cu. ft. covered hopper cars	LO	Pullman No. 3888, dated 1/10/79, as amended	Butler, Pa.	375	46,500	17,437,500	L&N 241950-242324	January 1981 at Butler, Pa.
The Chessie Corporation	100-ton coal hopper cars	HT	HT-51779, dated 6/21/79	Russell, Ky.	462	43,000	19,866,000	L&N 551100-551561	November 1980-January 1981 at Russell, Ky.
PACCAR Inc	70-ton, 60'9" single sheath box cars	XL	IC-2867, dated 12/14/78, as amended	Kenton, Ohio	35	71,000	2,485,000	L&N 410240-410274	December 1980 at Kenton, Ohio
							<u>\$43,238,500</u>		