

HOGAN & HARTSON

COLUMBIA SQUARE
555 THIRTEENTH STREET NW
WASHINGTON, DC 20004-1109
202/637-5600

PETER F. ROUSSELOT
DIRECT DIAL 202/837-5720

RECORDATION NO 7935-H FILED 1425

MAR 25 1991 -4 15 PM

INTERSTATE COMMERCE COMMISSION

6701 ROCKLEDGE DRIVE
BETHESDA, MARYLAND 20817
301/493-0030

111 SOUTH CALVERT STREET
BALTIMORE, MARYLAND 21202
301/859-2700

1-085A002

8300 GREENSBORO DRIVE
McLEAN, VIRGINIA 22102
703/848-2800

RECORDATION NO 7935-d FILED 1425

March 25, 1991

RECORDATION NO 7935-H FILED 1425

MAR 25 1991 -4 15 PM

INTERSTATE COMMERCE COMMISSION

BY HAND MAR 25 1991 -4 15 PM
INTERSTATE COMMERCE COMMISSION

Mr. Sydney L. Strickland .
Secretary
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423
ATTN: Mrs. Mildred Lee

MAR 25 4 03 PM '91

Dear Mr. Strickland:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two original executed and one notarized photostatic copies of the following documents:

1. Second Amendment to Lease of Railroad Equipment, executed by Heller Financial, Inc., as Lessor, and WCTU Railway Company, as Lessee, (including Schedule 1 thereto), dated March 18, 1991.

—The Second Amendment to Lease of Railroad Equipment amends the Lease of Railroad Equipment, dated March 1, 1975, and between WCTU Railroad Company and Walter E. Heller & Company (Recordation No. 7935-A, attached as Schedule 1 to the Second Amendment).

2. Amendment to the Conditional Sale Agreement, executed by Heller Financial, Inc., as Vendee, and First Security Bank of Utah, as Assignee, (including Exhibits A and B thereto), dated March 18, 1991.

C. Rousset
Mildred Lee

HOGAN & HARTSON

Mr. Sydney L. Strickland
March 25, 1991
Page 2

The Amendment to the Conditional Sale Agreement amends the Conditional Sale Agreement, dated March 1, 1975, and between Walter E. Heller & Company and Paccar Inc. (Recordation No. 7935, attached as Exhibit A to the Amendment). Also enclosed as Exhibit B to the Amendment is the Agreement and Assignment, dated March 1, 1975, and between Paccar Inc. and First Security Bank of Utah.

3. Amendment to Assignment of Lease and Agreement, executed by Heller Financial, Inc., as Lessor, or Vendee and First Security Bank of Utah, as Vendor, (including Schedule 1 thereto), dated March 18, 1991.

The Amendment to Assignment of Lease and Agreement amends the Assignment of Lease and Agreement, dated March 1, 1975, and between Walter E. Heller & Company and First Security Bank of Utah (Recordation No. 7935-B, attached as Schedule 1 to the Amendment).

A description of the railroad equipment covered by the enclosed documents is set forth in Annex B of the Conditional Sale Agreement, Recordation No. 7935, dated May 29, 1975.

The names and addresses of the aforementioned parties to the enclosed documents are:

Heller Financial, Inc.
c/o David Heisler
200 North LaSalle Street
Suite 1200
Chicago, IL 60601

WCTU Railway Company
c/o Nicholas A. Mermigas
111 West Jackson Boulevard
Chicago, IL 60604

First Security Bank of Utah, N.A.
c/o Tanta Lisa Clayton, Esq.
Corporate Trust Department
79 South Main Street
Salt Lake City, UT 84130

HOGAN & HARTSON

Mr. Sydney L. Strickland
March 25, 1991
Page 3

Also enclosed is a check payable to the order of the Interstate Commerce Commission, covering the required recordation fee. Kindly return one stamped photostatic copy of the enclosed document, as well as a stamped photostatic copy of this letter to Peter F. Rousselot, Esquire, Hogan & Hartson, 555 Thirteenth Street, N. W., Washington, D. C. 20004-1109.

Please feel free to contact me with any questions which you may have concerning the above.

Sincerely,



Peter F. Rousselot

Enclosures

cc: Sheila A. Glancy
Patrick M. Rahe

2676w

Interstate Commerce Commission
Washington, D.C. 20423

3/26/91

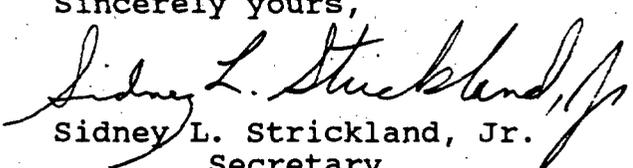
OFFICE OF THE SECRETARY

Peter F. Rousselot
Hogan & Hartson
Columbia Square
555 13th Street N.W.
Washington, D.C. 2000-4-1109

Dear Sir

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 3/25/91 at 4:15pm, and assigned recordation number(s). 7935-G, 7935-H & 7935-I

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

RECORDED BY 7935-J
MAR 25 1991 - 4:15 PM
INTERSTATE COMMERCE COMMISSION

AMENDMENT TO ASSIGNMENT OF LEASE
AND AGREEMENT BETWEEN HELLER FINANCIAL, INC.
AND FIRST SECURITY BANK
OF UTAH, N.A.

AMENDMENT dated as of March 18, 1991 (hereinafter called "Amendment") to ASSIGNMENT OF LEASE AND AGREEMENT, dated as of March 1, 1975 (hereinafter called "Assignment"), by and between HELLER FINANCIAL, INC., a Delaware corporation formerly named WALTER E. HELLER & COMPANY, (hereinafter called "Lessor" or "Vendee"), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but solely as Agent (hereinafter called "Bank" or "Vendor") under a Finance Agreement, dated as of March 1, 1975, among Vendor, Lessor, WCTU Railway Company, and the investors named in Schedules A and B thereto.

WHEREAS, WCTU RAILWAY COMPANY ("Lessee"), an Oregon corporation, and Lessor entered into a Lease of Railroad Equipment ("Lease"), dated as of March 1, 1975; and

WHEREAS, the Lease provides that the railroad equipment which is the subject of the Lease (the "Units") must be used in service exclusively in the United States of America; and

WHEREAS, the Lessee and the Lessor have entered into a Second Amendment To Lease of Railroad Equipment ("Second Amendment"), dated as of March 18, 1991, which amends the Lease and provides that the Lessee may also use and/or permit the use of the Units in service in Canada;

WHEREAS, the Second Amendment further provides that the Lessee will, at its own expense, file, register and record the Lease and each amendment thereto in all jurisdictions required by law or reasonably requested by the Vendee or the Bank for the purpose of proper protection of the Vendee's and the Bank's respective interests in the Units; provided that the Lessee shall not be required to take any such action in Canada if (1) the Lessee deems such action unduly burdensome, and (2) after giving effect to the failure to take such action, the Lessee has taken all action required by law so as to protect the Vendee's and the Bank's respective interests in the Units having a fair value of not less than 90% of the aggregate fair value of all of the Units (such fair value deemed to be the greater of (a) the actual fair market value thereof and (b) the Casualty Value thereof (as such term is defined in the Lease)); and

WHEREAS, the Second Amendment provides that the sole filing, registration, deposit and recording presently required in Canada pursuant to the terms and conditions of the Second Amendment is with the Office of the Registrar General of Canada pursuant to Section 90 of the Railway Act, R.S.C. 1985, c. R-3.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Lessor and Vendor do hereby agree to amend the Assignment, a copy of which is attached as Schedule 1 and incorporated by reference into this Amendment, as follows:

1. SECTION 9 of the Assignment is deleted in its entirety and the following is inserted in lieu thereof:

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and, with regard to Units situated in Canada, the parties shall be entitled to all rights conferred by section 90 of the Railway Act, R.S.C. 1985, c. R-3.

2. This Amendment is a part of the above referenced Assignment. In the event of any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the Assignment, the terms and conditions of this Amendment shall, to the extent of such conflict or inconsistency, govern.

3. This Amendment may be executed in several counterparts, such counterparts together constituting but one and the same instrument.

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

HELLER FINANCIAL, INC.

By: Alroy E. McMackin
Title: EVP

[Corporate Seal]
Attest: [Signature]

FIRST SECURITY BANK OF UTAH, N.A.,
Not in its individual capacity but
solely as Agent

BY: _____
TITLE: _____

(Corporate Seal)
Attest: _____

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, Lessor and Vendor do hereby agree to amend the Assignment, a copy of which is attached as Schedule 1 and incorporated by reference into this Amendment, as follows:

1. SECTION 9 of the Assignment is deleted in its entirety and the following is inserted in lieu thereof:

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and, with regard to Units situated in Canada, the parties shall be entitled to all rights conferred by section 90 of the Railway Act, R.S.C. 1985, c. R-3.

2. This Amendment is a part of the above referenced Assignment. In the event of any conflict or inconsistency between the terms and conditions of this Amendment and the terms and conditions of the Assignment, the terms and conditions of this Amendment shall, to the extent of such conflict or inconsistency, govern.

3. This Amendment may be executed in several counterparts, such counterparts together constituting but one and the same instrument.

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

HELLER FINANCIAL, INC.

By: _____
Title: _____

[Corporate Seal]
Attest:

FIRST SECURITY BANK OF UTAH, N.A.,
Not in its individual capacity but
solely as Agent

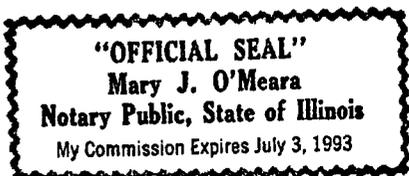
BY: *[Signature]*
TITLE: ASSISTANT VICE PRESIDENT

(Corporate Seal)
Attest:

[Signature]

STATE OF ILLINOIS)
)
COUNTY OF COOK) ss

On this 18th day of March, 1991, before me personally appeared GEORGE E. McMACKIN, to me personally known, who, being by me duly sworn, says that he is EXEC. V.P. of HELLER FINANCIAL, 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.



Mary J. O'Meara
Notary Public

[Notarial Seal]

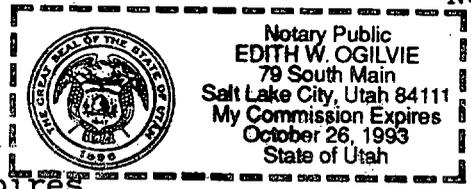
My Commission expires July 03, 1993

STATE OF Utah)
)
COUNTY OF Salt Lake) SS

On this 21 day of March, 1991, before me personally appeared Tanta Lisa Clayton, to me personally known, who, being by me duly sworn, says that she is Asst. Vice Pres. of FIRST SECURITY BANK OF UTAH, N.A., 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 she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Edith W Ogilvie
Notary Public

[Notarial Seal]



My Commission expires _____

Schedule 1 to AMENDMENT TO ASSIGNMENT
OF LEASE AND AGREEMENT BETWEEN HELLER
FINANCIAL, INC. AND FIRST SECURITY
BANK OF UTAH, N.A.

RECORDATION NO. 7935-B FILED & RECORDED
MAY 29 1975--10:35 AM
INTERSTATE COMMERCE COMMISSION

Annex D to
Conditional Sale Agreement

ASSIGNMENT OF LEASE AND AGREEMENT dated
as of March 1, 1975 (hereinafter called
this Assignment), by and between WALTER E.
HELLER & COMPANY, a Delaware corporation
(hereinafter called the Lessor or the Vendee),
and FIRST SECURITY BANK OF UTAH, N. A., a
national banking association, not in its
individual capacity but solely as Agent (here-
inafter called the Vendor) under a Finance
Agreement dated as of the date hereof (here-
inafter called the Finance Agreement).

WHEREAS the Vendee is entering into a Conditional
Sale Agreement dated as of the date hereof (hereinafter
called the Security Documentation) with PACCAR Inc (herein-
after called the Builder) providing for the sale to the
Vendee of such units of railroad equipment (hereinafter
called the Units) described in Annex B thereto as are deliv-
ered to and accepted by the Vendee thereunder;

WHEREAS the Lessor and WCTU Railway Company (herein-
after called the Lessee) have entered into a Lease of Railroad
Equipment dated as of the date hereof (hereinafter called
the Lease), providing for the leasing by the Lessor to the
Lessee of the Units; and

WHEREAS, in order to provide security for the obli-
gations of the Lessor under the Security Documentation and as
an inducement to the Vendor to invest in the Conditional Sale
Indebtedness (as that term is defined in the Security Docu-
mentation), the Lessor has agreed to assign for security pur-
poses its rights in, to and under the Lease to the Vendor;

NOW, THEREFORE, in consideration of the premises
and of the payments to be made and the covenants hereinafter
mentioned to be kept and performed, the parties hereto agree
as follows:

1. Subject to the provisions of Paragraph 11
hereof, the Lessor hereby assigns, transfers and sets over
unto the Vendor, as collateral security for the payment and
performance of the obligations of the Lessor as Vendee, all
the Lessor's right, title and interest, powers, privileges,
and other benefits under the Lease, including, without limi-

tation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or in the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

The Vendor agrees to accept any Payments made by the Lessee for the account of the Lessor pursuant to the Lease. To the extent received, the Vendor will apply such Payments to satisfy the obligations of the Lessor under the Security Documentation, subject to the limitations contained in the last paragraph of Article 4 of the Security Documentation, and to provide for the payments required to be made by the Vendor pursuant to the last paragraph of Paragraph 4 of the Finance Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the Security Documentation could constitute an event of default thereunder shall have occurred and be continuing, any balance shall be paid to the Lessor on the same date such Payment is applied to satisfy such obligations of the Lessor, by check mailed to the Lessor on such date or, upon written request of the Lessor, by bank wire to the Lessor at such address as may be specified to the Vendor in writing, and such balance shall be retained by the Lessor. If the Vendor shall not receive any rental payment under the first paragraph of § 3 of the Lease when due, the Vendor shall notify the Lessor at the address set forth in the Lease; provided, however, that the failure of the Vendor to so notify the Lessor shall not affect the obligations of the Lessor hereunder or under the Security Documentation.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under

the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

3. The Lessor will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Lessor; without the written consent of the Vendor, the Lessor will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge the Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and the Lessor agrees that any amendment, modification or termination thereof without such consent shall be void. At the Lessor's sole cost and expense, the Lessor will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Lessor under the Lease.

4. Subject to the provisions of Paragraph 11 hereof, the Lessor does hereby irrevocably constitute the Vendor the Lessor's true and lawful attorney, with full power (in the name of the Lessor, or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which the Lessor is or may become entitled, to enforce compliance by the Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Vendor may deem to be necessary or advisable in the premises. The Vendor will notify the Lessor of actions taken by the Vendor pursuant to this Paragraph 4.

5. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Documentation and the Finance Agreement, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

6. On each Closing Date (as defined in the Security Documentation) the Lessor will furnish the Vendor with an opinion of counsel that this Assignment has been duly authorized, executed and delivered by the Lessor and is a legal and valid agreement binding on the Lessor.

7. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure the interest of the Vendor hereunder.

8. The Vendor may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Vendor hereunder.

9. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

10. The Lessor shall cause copies of all notices received in connection with the Lease and all payments hereunder to be promptly delivered or made to the Vendor at its address set forth in Article 22 of the Security Documentation, or at such other address as the Vendor shall designate.

11. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as an event of default under the Security Documentation has not occurred and is not then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment, except the right to receive and apply the Payments as provided in Paragraph 1 hereof.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as

of the date first above written.

WALTER E. HELLER & COMPANY,

by S. EICHENFIELD

Vice President

[Corporate Seal]

Attest:

CHARLES A. BRIZZOLARA

Secretary

FIRST SECURITY BANK OF UTAH, N. A.,
Not in its individual capacity
but solely as Agent,

by ROBERT S. CLARK

Authorized Officer

[Corporate Seal]

Attest:

FUCHIA B. EICHERS

Authorized Officer

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this 27th day of May 1975, before me personally appeared ROBERT S. CLARK, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N. A., that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank 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 bank.

DEBBIE J. LANGENFELD

Notary Public

[Notarial Seal]

My Commission expires July 22, 1978

Exhibit B to AMENDMENT TO THE
CONDITIONAL SALE AGREEMENT BETWEEN
HELLER FINANCIAL, INC. AND FIRST
SECURITY BANK OF UTAH, N.A., AS
AGENT AND ASSIGNEE

RECORDATION NO. 7935-D FILED & RECORDED
MAY 29 1975--10:35 AM
INTERSTATE COMMERCE COMMISSION

EXHIBIT B
TO
FINANCE AGREEMENT

AGREEMENT AND ASSIGNMENT

Dated as of March 1, 1975

between

PACCAR INC

and

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

AGREEMENT AND ASSIGNMENT dated as of March 1, 1975, between PACCAR INC, a Delaware corporation (hereinafter called the Builder), and FIRST SECURITY BANK OF UTAH, N.A., a national banking association, not in its individual capacity but solely as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), said Agent, so acting, being hereinafter called the Assignee.

WHEREAS the Builder and WALTER E. HELLER & COMPANY, a Delaware corporation (hereinafter called the Vendee), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment); and

WHEREAS the Vendee and WCTU RAILWAY COMPANY, an Oregon corporation (hereinafter called the Lessee), have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessee of the Equipment;

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

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

(a) all the right, security title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Vendee, subject to payment by the Assignee to the Builder of the amount required to be paid pursuant to Section 4 hereof and of the amounts due from the Vendee to the Builder under the Conditional Sale Agreement;

(b) all the right, title and interest of the

Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursement for taxes paid or incurred by the Builder), and except as aforesaid in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Vendee under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraphs (a) and (b) of this paragraph, all the Builder's rights, titles, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse hereunder, however, against the Builder for or on account of the failure of the Vendee to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements referred to in Article 14 of the Conditional Sale Agreement or relieve the Vendee from its obligations to the Builder contained in Articles 2, 3, 4, 6, 14, 15, 20 and 23 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Vendee with respect to the Equipment shall be and remain enforceable by the Vendee, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Vendee with the terms and agreements on its part to be performed under the Condi-

tional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Vendee thereunder. The Builder will not deliver any of the Equipment to the Vendee under the Conditional Sale Agreement until the Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filing and recordation have occurred).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expenses, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever claimed by the Vendee or the Lessee arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by

reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Vendee or the Lessee in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Lessee or the Guarantor and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee or the Guarantor and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Annex A to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any claim actually known to the Assignee which is based upon any such alleged infringement and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Vendee or the Lessee with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agree-

ment with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment included in such Group which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee (with an executed counterpart to the Vendee), as provided in Article 15 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) an instrument of conveyance from the Builder to the Assignee and the Vendee confirming the conditional sale to the Vendee of the units of Equipment in such Group and transferring to the Assignee the security interest of the Builder in the units of the Equipment in such Group, warranting to the Assignee and to the Vendee that, at the time of delivery of such units under the Conditional Sale Agreement, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease, and covenanting to defend the title to such units against demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement and § 2 of the Lease;

(c) a certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units under the Conditional Sale Agreement and the Lease;

(d) an invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(e) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement and the Lease have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instruments enforceable in accordance with its terms, (iii) this Assignment, the Lease Assignment, the Lessee's Consent and Agreement and the Guaranty Agreement (all as defined or referred to in Article 1 of the Conditional Sale Agreement) have been duly authorized, executed and delivered by the respective parties thereto and are legal, valid and binding instruments, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges of the Builder purported to be assigned to it by this Assignment, (v) the Assignee is vested with a valid security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Vendee under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and the rights of the Lessee under the Lease), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement, this Assignment, said Lessee's Consent and Agreement or said Guaranty Agreement, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, and (viii) registration of the Conditional Sale Agreement, this Assignment or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of

1939, as amended; and covering such other matters as may be reasonably requested by the Assignee or such Investors;

(f) an opinion of counsel for the Vendee, dated as of such Closing Date, to the effect that (i) the Conditional Sale Agreement, the Lease, the Lease Assignment, the Finance Agreement and the Guaranty Agreement have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the parties thereto and enforceable against the parties thereto in accordance with their terms; (ii) no approval of any governmental authority is required for the entering into, delivery or performance of the documents referred to in the preceding clause (i) by the Vendee; (iii) this Assignment and the Lessee's Consent and Agreement, assuming due authorization, execution and delivery by the parties thereto, are legal, valid and binding agreements; and (iv) the Vendee has acquired from the Builder such title to the Equipment as the Builder had immediately prior to the conveyance thereof to the Vendee; ←

(g) an opinion of counsel for the Lessee dated as of such Closing Date and addressed to the Vendee and the Assignee, to the effect that this Assignment, the Conditional Sale Assignment, the Lease Assignment, the Finance Agreement, the Lessee's Consent and the Guaranty Agreement, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the parties thereto and enforceable against the parties thereto in accordance with their terms under the laws of the State of Illinois and to the further effect set forth in clauses (vi) and (vii) of subparagraph (e) above and in § 15 (I) of the Lease; and an opinion of counsel for the Guarantor dated as of such Closing Date and addressed to the Vendee and the Assignee, to the effect set forth in § 15(II) of the Lease; ←

(h) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (e) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered

by the Builder, assuming due authorization, execution and delivery by the other parties thereto, and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder, assuming due authorization, execution and delivery by the other parties hereto, and is a legal and valid instrument binding upon the Builder, and (iv) at the time of delivery of the units of Equipment included in such Group to the Vendee, the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free from all claims, liens, security interests and other encumbrances (other than the rights of the Vendee under the Conditional Sale Agreement and the rights of the Lessee under the Lease);

(i) a representation and warranty of the Lessor to the effect that no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect against the Lessor which would adversely affect the security interest of the Assignee in the Equipment or the Lease; and

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

In giving the opinions specified in subparagraphs (e), (f), (g) and (h) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (e), counsel may rely (i) as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder and (ii) as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder, the Lessee, the Guarant-

tor or the Vendee as to such matter.

The obligation of the Assignee hereunder to make payment for any of the Equipment assigned hereunder is hereby expressly conditioned upon the Assignee's having on deposit or available upon the liquidation of investments, pursuant to the terms of the Finance Agreement, sufficient funds immediately available to it to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement. The Assignee shall not be obligated to make any of the above-mentioned payments at any time after the commencement of any proceedings specified in clause (c) of Article 16 of the Conditional Sale Agreement or clauses D or E of § 10 of the Lease or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Vendee thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving the written notice required in Article 15 of the Conditional Sale Agreement, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, the Conditional Sale Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time, at the request of the Assignee or its successors or assigns,

make, execute and deliver all such further instruments of assignment, transfer and assurance and do all such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of Equipment.

SECTION 8. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although for convenience this Assignment is dated as of the date first above written, the actual 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 duly authorized officials, and their respective corporate seals

to be hereunto affixed and duly attested, all as of the date first above written.

PACCAR INC,

by J. J. JOLLEY

Vice President

[Corporate Seal]

Attest:

E. A. CARPENTER

Secretary

FIRST SECURITY BANK OF UTAH, N.A.,
Not in its individual capacity
but solely as Agent,

by ROBERT S. CLARK

Authorized Officer

[Corporate Seal]

Attest:

FUCHIA B. EICHERS

Authorized Officer

STATE OF UTAH,)
) ss..
COUNTY OF SALT LAKE,)

On this 27th day of May 1975, before me personally appeared ROBERT S. CLARK, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of FIRST SECURITY BANK OF UTAH, N.A.; that one of the seals affixed to the foregoing instrument is the corporate seal of said bank that said instrument was signed and sealed on behalf of said bank 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 bank.

DEBBIE J. LANGENFELD

Notary Public

[Notarial Seal]

My Commission expires July 22, 1978

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 1, 1975.

WALTER E. HELLER & COMPANY,

by S. EICHENFIELD

Vice President

WCTU RAILWAY COMPANY,

by GERALD F. LAHEY

President