EXECUTED IN 10 COUNTERPARTS

No. 10

CONDITIONAL SALE AGREEMENT

Dated as of March 15, 1970

RECORDATION NO. 5722 Filed & Recorded

MAY 19 1970 -3 12 PM

INTERSTATE COMMERCE COMMISSION

BETWEEN

CUSTOM SERVICES CORP.

AND

SOUTHERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of March 15, 1970

BETWEEN

CUSTOM SERVICES CORP.

AND

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, *as Agent*

CONDITIONAL SALE AGREEMENT dated as of March 15, 1970 between the corporation named in Item 1 of Schedule A hereto (hereinafter called the "Builder" or the "Vendor", as more particularly set forth in Article 28 hereof), and SOUTHERN RAILWAY COMPANY, a Virginia corporation, (hereinafter called the "Railroad").

WHEREAS the Builder has agreed to sell and deliver to the Railroad, and the Railroad has agreed to purchase from the Builder, the railroad equipment described in Schedule B, attached hereto (hereinafter called the "Equipment"); and

WHEREAS the Builder and the Railroad have agreed that this Agreement shall exclusively and completely state the rights of the Vendor and the Railroad with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment;

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

ARTICLE 1. *Construction and Sale.* The Builder will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for, as hereinafter provided, the Equipment, each unit of which shall be constructed in accordance with the agreed specifications therefor and in accordance with such modifications thereof as have been or may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are hereinafter called the "Specifications"). The Railroad represents and warrants that the equipment and material in such units and component parts thereof, when constructed in accordance with the Specifications, shall conform to all Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to railroad equipment of the character of such units as of the date of this Agreement.

ARTICLE 2. *Inspection and Delivery.* The Builder will deliver each unit of the Equipment to the Railroad at such point within the United States of America as shall be specified by the Railroad, freight charges prepaid, in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the 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, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered on or before the Cut-Off Date (as defined in Article 28 hereof) shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute an agreement or agreements supplemental hereto limiting this Agreement to the Equipment delivered and accepted hereunder and, if the Builder's failure to deliver the Equipment so excluded resulted from one or more of the causes referred to in the next preceding paragraph, the Railroad and the Builder shall execute a separate agreement or agreements providing for the purchase of such excluded Equipment by the Railroad, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust, or such other appropriate method of financing the purchase as the Railroad shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives of the Railroad. Upon delivery of each unit thereof at the place of delivery designated as hereinabove provided, the Railroad agrees to cause a certificate of acceptance (hereinafter called the "Certificate of Acceptance") to be executed, in such number of counterparts as may reasonably be requested, by a proper officer or an agent of the Railroad and delivered to the Builder stating that such unit has been delivered to the Railroad hereunder in accordance with this Agreement,

has been inspected and accepted on behalf of the Railroad, conforms to the Specifications applicable thereto, to all applicable Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads as aforesaid and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of Equipment covered thereby has been delivered to the Railroad and conforms to the Specifications, requirements and standards as aforesaid and is acceptable to the Railroad in all details; *provided, however,* that the Builder shall not be relieved of its warranty covering material and workmanship contained in Article 10 hereof.

On the delivery of each such unit hereunder, the Railroad will assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The base price per unit of the Equipment, exclusive of interest, is set forth in Schedule B hereto (which price is hereinafter called the "Base Price"). The Base Price shall be subject to increase or decrease by reason of modifications in the Specifications mutually agreed upon between the Builder and the Railroad, notice of which increase of decrease shall be furnished to the Vendor (the Base Price as so increased or decreased being hereinafter called the "Purchase Price").

The Equipment shall be divided into groups (each such group being hereinafter called a "Group"), each Group to consist of such number of units (but not less than the number of units specified in Item 2 of Schedule A hereto in any but the last Group) of the Equipment to be constructed and sold by the Builder as the Railroad shall by written notice designate to the Builder from time to time. The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided); *provided, however,* that if there shall at any time have been delivered to and accepted by the Railroad units of Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 15 days or more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

The Railroad 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) With respect to each unit of Equipment, the amount of the Purchase Price set forth under "Deferred Purchase Price Per Unit" in Schedule B (hereinafter called the "Deferred Purchase Price"), in 10 annual instalments as hereinafter provided;

(b) The amount by which the Base Price or the Purchase Price, whichever is less, exceeds the Deferred Purchase Price on the Closing Date (as hereinafter defined) with respect to each unit of Equipment included in each Group; and

(c) On the earlier of the Cut-Off Date or the final Closing Date, the balance, if any, of the aggregate Purchase Price of the Equipment over the amount paid for the Equipment pursuant to subparagraphs (a) and (b) above.

The Deferred Purchase Price shall be payable in ten equal annual instalments (except for appropriate adjustment of the final instalment, if necessary), payable on March 15, 1971 and on each March 15 thereafter to and including March 15, 1980, subject to adjustments as the result of prepayments of instalments resulting from Casualty Occurrences (as hereinafter defined) or any determination that any unit of Equipment is otherwise unsuitable for the use for which purchased; *provided, however,* if settlement for all the units of Equipment shall not have been made on or before March 15, 1971, the instalment payable on March 15, 1971 shall be an amount equal to 1/10 of the Deferred Purchase Price with respect to the Equipment for which settlement has theretofore been made, and the instalment payable on March 15, 1972 shall be an amount equal to 1/10 of the De-

ferred Purchase Price for all the Equipment plus an amount equal to the difference between the instalment payable on March 15, 1972 (without taking into account any application to such instalment of a pre-payment pursuant to Article 8 hereof) and the instalment payable on March 15, 1971. The unpaid balance of the annual instalments of the Deferred Purchased Price shall bear interest from the several Closing Dates at the rate of 8% per annum, such interest to be payable, to the extent accrued, on March 15, and September 15, of each year commencing September 15, 1970.

If this Agreement shall have been assigned by the Builder, the obligation of the Railroad under subparagraphs (b) and (c) of the third paragraph of this Article shall be an unsecured obligation and the Builder shall not, with respect to such obligation, have any lien or claim against any units of Equipment or any part thereof for which any assignee shall have paid all or a portion of the Purchase Price.

The term "Closing Date" with respect to each Group shall mean such date, not more than 10 business days following presentation by the Builder to the Railroad of the invoice and the Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to such Builder at least 5 business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays or days on which banking institutions are authorized by law to close.

ARTICLE 4. *Interest Computation, Etc.* Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 8¼% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made by the Railroad 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. In any case where the date of a payment provided for in this Agreement shall be, in The City of New York, a Sunday or a holiday or a day on which banking institutions are authorized by law to close, then such payment need not be made on such date but may be made on the next succeeding business day with the same force and effect as if made on the date provided for in this Agreement and no interest shall accrue for the period after such date. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

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 in respect of the amount of any local, state or federal taxes (other than income or gross receipts [except gross income or gross receipts taxes in the nature of and in lieu of sales taxes] or excess profits and similar taxes) or license fees hereafter levied or imposed upon, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessment, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of an invoice therefor; *provided, further,* that the Railroad shall not be obligated to reimburse the Vendor for any

expenses, taxes, assessments, license fees, charges, fines or penalties so paid unless the Vendor shall have been legally liable in respect thereof, or unless the Railroad shall have approved the payment thereof. Whenever the Railroad shall pay any such expenses, taxes, assessments, license fees, charges, fines or penalties for or on behalf of the Vendor or shall reimburse the Vendor therefor, when paid by the Vendor with or without the Railroad's approval, and it is later determined that any such payment has been made in error or in excess of actual liability in the premises, the Railroad shall have the right in the name of the Vendor to seek a refund therefor or for any part thereof, and the Vendor agrees to assign to the Railroad its right to any such refund or otherwise to cooperate with the Railroad fully in obtaining, or attempting to obtain, such refund.

ARTICLE 6. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder 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 herein provided. 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.

When and only when the Vendor shall have been paid the Deferred Purchase Price of the Equipment together with interest and all other payments as herein provided, 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, and the Vendor, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or its nominee free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will execute and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeiture or damages for failure to execute and deliver such bill or bills of sale 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 such instrument or instruments within a reasonable time after written demand of the Railroad.

ARTICLE 7. *Marking of Equipment.* The Railroad will cause each unit of the Equipment delivered to it to be kept numbered with its identifying number as set out in Schedule B hereto, and will, subject to the provisions of Article 17 hereof, cause each side of each such unit to be kept plainly, distinctly, permanently and conspicuously marked, by a metal plate or otherwise, in letters not less than one-half inch in height, with the name of the Vendor followed by the word "Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement. The Railroad will not place any unit of the Equipment in operation or exercise any control or dominion over any such unit unless each side of such unit shall have been so marked and will replace promptly any such plate, or renew any such marking which may be removed, defaced or destroyed. The Railroad will not change the identifying numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and shall be promptly filed and recorded by the Railroad with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on 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 name or initials of the Railroad or with the name or initials of a company controlling, or controlled by or under common control with, the Railroad (hereinafter called an "Affiliate") or may letter it in some other appropriate manner for convenience or identification of the interest of the Railroad or such Affiliate therein.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed or irreparably damaged (hereinafter called a "Casualty Occurrence") or shall be determined otherwise unsuitable in any respect for the use for which purchased, prior to the payment of the full indebtedness in respect of the Deferred Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within ten days after it shall have been determined that a unit has suffered a Casualty Occurrence or is otherwise unsuitable for use, fully inform the Vendor in regard thereto and, within thirty days after such determination, shall pay to the Vendor a sum equal to the then value of such unit determined as hereinafter provided, and the Vendor shall not thereafter have any interest in such unit or in any material salvageable from such unit; *provided, however,* that the Railroad shall not be required to make such payment unless the accumulated value with respect to units which have suffered a Casualty Occurrence or which have been determined unsuitable for use (exclusive of units in respect of which a payment previously shall have been made as hereinabove provided) shall exceed $50,000. For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence or determined to be otherwise unsuitable for use shall be the Purchase Price of such unit less depreciation accrued thereon computed by the straight-line method at the rate of 10% per annum for each full calendar year (but not *pro rata* for any part of a year) elapsed since the date of delivery and acceptance of such unit to the date of said Casualty Occurrence or said determination.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor (i) to prepay instalments of the Deferred Purchase Price; or (ii) to or toward the lesser of either the original cost or the current fair market value of a unit or units of standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than March 15, 1970, to replace such unit having suffered a Casualty Occurrence or determined to be otherwise unsuitable for the use for which purchased. In case any money is applied to prepay instalments of the Deferred Purchase Price, it shall be applied to instalments thereafter falling due, *pro rata.* In the event that any moneys paid to, or held by, the Vendor pursuant to this Article 8 are applied to the prepayment, without premium, of instalments of the Deferred Purchase Price of the Equipment, the Railroad will pay to the Vendor on the date of such application interest then accrued and unpaid on the amount so prepaid.

Whenever the Railroad shall file with the Vendor, pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacing unit of such standard gauge railroad equipment, the Railroad shall file therewith:

(1) a certificate of a Vice President or an Assistant Vice President or the Comptroller or other Chief Accounting Officer of the Railroad certifying that such replacing unit is standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than March 15, 1970, that it complies with all applicable standards, specifications and requirements of the Association of American Railroads and the Interstate Commerce Commission, that it has been plated or marked and numbered as required by the provisions of this Article 8 and certifying the original cost and the current fair market value of such replacing unit;

(2) an opinion of counsel for the Railroad that title to such replacing unit is vested in the Vendor free and clear of all claims, liens, security interests and other encumbrances, and that such unit has come under and become subject to this Agreement; and

(3) a bill of sale in favor of the Vendor, in form and substance satisfactory to the Vendor, covering such replacing unit.

The Railroad will cause any replacing unit to be plated or marked as provided in Article 7 hereof and, if of the same character as the unit being replaced, to be numbered with the same number as such replaced unit. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the 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. Title to all such replacements shall be free and clear of all claims, liens, security interests and other encumbrances 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 and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such replacements. A replacement for a unit of the Equipment which has suffered a Casualty Occurrence or has been determined to be otherwise unsuitable for the use for which purchased within one year after the delivery of such unit by the Builder to the Railroad under the terms of this Agreement shall be guaranteed and warranted in like manner as the unit it replaces.

So long as none of the events of default specified in Article 18 hereof shall have happened 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 Government Securities (as hereinafter defined) as may be specified in such written direction, and any such obligations shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any Government Securities shall be sold by the Vendor at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Deferred Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest, earned discount or profit received by the Vendor on any Government Securities shall be held by the Vendor and applied as herein provided. Upon any sale or collection at maturity of any Government Securities, the proceeds thereof, plus any interest or earned discount received by the Vendor thereon, up to the cost (including accrued interest paid on purchase) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest and earned discount and profit thereon) 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 Government Securities. The term "Government Securities" as used herein shall mean bonds, notes or other direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of interest and principal.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 8 (including for this purpose Government Securities and interest and earned discount and profit thereon) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

Upon full payment of all indebtedness in respect of the Deferred Purchase Price of the Equipment, and all interest thereon, and all other amounts payable by the Railroad hereunder, any money held by the Vendor pursuant to this Article 8 (including for this purpose Government Securities and interest and earned discount and profit thereon) or any other provision hereof shall be paid to the Railroad.

In order to facilitate the sale or other disposition of any unit of the Equipment suffering a Casualty Occurrence or determined to be otherwise unsuitable for the use for which purchased, the Vendor shall, after deposit by the Railroad of a sum equal to the value of such unit of Equipment at the time of the Casualty Occurrence or at the time of such determination, at the request of the Railroad, execute and deliver to the Railroad or its vendee, assignee or nominee, a bill of sale for such Equip-

ment conveying all its right, title and interest in and to such unit of Equipment, and such other documents in such form as may be reasonably requested by the Railroad and accompanying such request so as to eliminate such unit of Equipment from the terms and scope of this Agreement.

ARTICLE 9. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment in good order and repair at its own expense.

ARTICLE 10. *Builder's Warranties of Material and Workmanship.* The Builder warrants that the units of the Equipment will be built in accordance with the Specifications and warrants that the units of the Equipment will be free from defects in material and workmanship provided by the Builder; the Builder's obligation under this Article 10 being limited, as the Railroad may elect, (i) to repairing at its plant, or (ii) to delivering to the Railroad at its plant, a new part or parts in replacement of, or (iii) to paying the cost (according to the Association of American Railroads Code of Rules Governing Condition of and Repairs to Freight and Passenger Cars with Interchange Traffic) of repair or replacement of, any part or parts of any unit of the Equipment which shall fail under normal use and service within one year after shipment of such unit from the Builder's plant, provided that the Builder is notified of the defect when it is first discovered and accorded an opportunity for verification. These warranties are expressly in lieu of all other warranties, expressed or implied, and of all other obligations or liabilities on the part of the Builder, except for its obligations under Articles 1, 2 and 16 hereof, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid. The Builder agrees with the Railroad that the acceptance of any unit by the Railroad under Article 2 hereof shall not be deemed a waiver by the Railroad of any of its rights under this Article 10. These warranties shall continue in full force and effect, notwithstanding the full payment of the Deferred Purchase Price together with interest thereon, and all other payments as herein provided, and the transfer of title to the Equipment, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will 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 Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *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 hereunder.

ARTICLE 12. *Reports and Inspections.* On or before July 1 in each year, commencing with the year 1971, the Railroad will furnish to the Vendor a statement signed by an authorized officer of the Railroad showing, as at the preceding April 1, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence or been determined unsuitable for the use for which purchased during the preceding year (except that the first such report shall cover the period from the first Closing Date to April 1, 1971) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request. Together with such statement, the Railroad will also furnish to the Vendor, a statement executed by an authorized officer of the Railroad stating that, in the case of all Equipment repaired or repainted during the preceding year, the plates or other 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 once in every year. The Railroad, insofar as it may legally do so, shall supply free railroad transportation over its lines for designated agents of the Vendor for the purposes of enabling

such agents to reach the point or points where the Equipment is in operation and the Railroad's records with respect thereto are kept, for the purpose of inspection.

ARTICLE 13. *Possession and Use.* Subject to all the terms and conditions of this Agreement including, but not limited to, the provisions of Article 7, the Railroad, from and after delivery of the Equipment by the Builder hereunder, so long as it shall not be in default under this Agreement, (i) shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, and upon the lines of railroad owned or operated by any Affiliate or over which the Railroad has trackage rights, and also upon connecting and other railroads in the usual interchange of traffic, and (ii) may license any corporation or other entity to use the Equipment upon the aforesaid lines.

ARTICLE 14. *Prohibition against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 15. *Railroad's Indemnities.* The Railroad agrees to save, indemnify and keep harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Purchase Price and the conveyance of the Equipment, as provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment, *provided, however,* that the Builder shall not be relieved from its obligations set forth in Article 10 hereof.

ARTICLE 16. *Patent Indemnities.* Except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder and articles and materials specified by the Railroad and not manufactured by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right; and the Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, 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 the Equipment, or any unit thereof, of any design, article or material specified by the Railroad and not manufactured by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and not manufactured by the Builder and purchased or otherwise acquired by the Builder for the use in or about the construction or operation of the Equipment to be constructed and sold by the Builder, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Builder further agrees to execute and deliver to the Railroad, or

its assigns, all and every such further assurance as may be reasonably requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The 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 the Builder of any claim known to the Railroad from which liability may be charged against such Builder hereunder. Said covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 17. *Assignments.* To the extent that it may effectively do so under applicable provisions of law, the Railroad agrees that it will not sell, assign, transfer or otherwise dispose of its rights under this Agreement except to an Affiliate (and then only subject to this Agreement and without releasing the Railroad from its obligations hereunder), or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company or other purchaser 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 and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant; *provided, however,* that the Railroad shall remain liable for such payment and performance as a principal and not as a surety.

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 an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Railroad of its obligations to the Builder under Articles 2, 4, 5, 15 and 16, subparagraphs (b) and (c) of the third paragraph of Article 3 hereof and the seventh paragraph of this Article 17 or any other obligation which, according to its terms and 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 of the Vendor's right, title and interest in and to the Equipment, 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 hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice or as specified in said assignment.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, and of certain of 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 and of any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Deferred 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, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such transfer or assignment, or successive transfers or assignments by the Vendor, of title to the Equipment and of the Vendor's rights hereunder in respect thereof, the Railroad will, whenever requested by such transferee or assignee, change the name plates or other marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such plates or other marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such plates or other marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of obtaining and attaching any series of such plates or changing any other marking in the event of any transfer or assignment of title to the Equipment shall be borne by the Railroad.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment, deliver to the assignee or transferee of the Equipment counterparts of the Railroad's notice to the Builder fixing the Closing Date in accordance with the last paragraph of Article 3 hereof and will further deliver, in accordance with the terms of such transfer or assignment, all documents to be delivered to such assignee or transferee in connection with such settlement in such number of counterparts as may reasonably be requested, except for any opinion of special counsel for such assignee or transferee.

If this Agreement shall have been assigned by the Builder and the assignee shall not for any reason make payment to the Builder with respect to units of Equipment at the time and in the amount specified in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and if such payment shall not have been previously paid by the assignee, the Railroad will, not later than 30 days after the Closing Date for such units, pay or cause to be paid to the Builder the aggregate Deferred Purchase Price of such units, together with interest from the Closing Date to the date of payment by the Railroad at the minimum commercial lending rate of leading New York City Banks in effect the date such payment was made.

ARTICLE 18. *Defaults.* In the event that any one or more of the following events of defaults shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full, when due and payable hereunder, any sum payable by the Railroad as herein provided and such failure shall continue for more than 10 days; or

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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall within 30 days from the filing thereof be 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 duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations 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, and, unless such proceeding shall within 30 days from the filing or effective date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffec-

tiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed 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 obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence of such event of default the Vendor may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, declare the entire indebtedness in respect of the aggregate Deferred 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 at the rate of 8¼% per annum, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the aggregate Deferred 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 Vendor may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. If at any time after such declaration all sums which shall have become due and payable by the Railroad hereunder (other than indebtedness which shall have become due and payable solely by reason of such declaration) shall be paid by the Railroad (with interest at the rate of 8¼% to the extent legally enforceable) before any sale or lease of any of the Equipment, and every other default in the observance or performance of any covenant or condition hereof shall be made good or secured to the satisfaction of the Vendor, or provision deemed by the Vendor to be adequate shall be made therefor, then, and in every such case, the Vendor shall waive any such event of default and its consequences and rescind and annul any such declaration. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and 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 19. *Remedies.* If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time after the entire indebtedness in respect of the aggregate Deferred Purchase Price shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof) and during the continuance of such default, the Vendor, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law 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 any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad or any persons or corporations then in possession thereof, and for such purpose may enter upon the Railroad's or such person's or corporation's 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 or of such person or corporation, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad or an

Affiliate for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines or the lines of an Affiliate as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor; and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad or of an Affiliate until the Vendor shall have leased or sold the same, and for such purpose the Railroad agrees to furnish or cause to be furnished, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

If an event of default shall have occurred and be continuing as hereinbefore provided, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the aggregate Deferred Purchase Price shall have been declared immediately due and payable as hereinbefore provided, the Vendor, after retaking possession of the Equipment as hereinbefore in this Article 19 provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), may, subject to any mandatory requirements of law then in force applicable thereto, at its election, sell the Equipment or any unit thereof, free from any and all claims of the Railroad, or of any other party claiming by, 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, and pending any such sale the Vendor, with or without retaking possession of the Equipment, may, but shall have no obligation to, lease from time to time any or all units thereof to such persons or corporations on such terms and for such periods as it shall deem advisable, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale or lease. The proceeds of such sale or lease, less attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited against the amount due to the Vendor under the provisions of this Agreement.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, 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 in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Vendor may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

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.

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, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover 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, to the extent permitted by law, recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Vendor hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 20. ***Applicable State Laws.*** Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than a conditional sale agreement, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale agreement and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, to the fullest 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 the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. 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 obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the obligations of the Railroad or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

ARTICLE 22. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interest herein, and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file 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 title to 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 and recording and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 23. *Payment of Expenses.* The Railroad will pay all reasonable costs, charges and expenses, except the counsel fees of the Builder, but including the fees and expenses of counsel for the first assignee of this Agreement, and including stamp and other taxes, if any, incident to the printing, or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by the Builder of this Agreement, of any instrument supplemental to or amendatory of this Agreement or of such first assignment and of any certificate of the payment in full of the indebtedness in respect of the Deferred Purchase Price due hereunder. In addition, the Railroad will pay all reasonable costs, charges and expenses, including fees and expenses of counsel, and including stamp and other taxes, if any, of the first assignee of this Agreement, including the fees of an agent if the first assignee is an agent and of any parties acquiring interest in such first assignment incurred in connection with such first assignment and payments to the Builder by such first assignee, and in connection with the transfer by any party or parties of interest acquired in such first assignment.

ARTICLE 24. *Notice.* Any notice hereunder to the Railroad shall be deemed to be properly served if delivered to the Railroad at Southern Railway Building, 15th and K Street, N. W., Washington, D. C. or mailed by first-class mail to it at Post Office Box 1808, Washington, D. C. 20013 or at such other address as may have been furnished in writing to the Vendor by the Railroad. Any notice hereunder to the Builder shall be deemed to be properly served if delivered or mailed by first-class mail to the Builder at the address specified in Item 3 of Schedule A hereto, or at such other address as may have been furnished in writing to the Railroad by the Builder. Any notice hereunder to any assignee of the Vendor or of the Railroad shall be deemed to be properly served if delivered or mailed by first-class mail to such assignee at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Law Governing.* The validity and perfection of the Vendor's security interest in the Equipment and the effect of filing this Agreement and any assignment thereof shall be determined by the laws of the District of Columbia or of the United States or of any statute of a jurisdiction outside the United States pursuant to which this Agreement and any assignment thereof may be recorded. With the exception of the foregoing, to the extent not prohibited by mandatory requirements of law, the terms of this Agreement and all rights and obligations hereunder shall be governed by and construed in accordance with the laws of the State of New York.

ARTICLE 27. *Effect and Modification of Agreement.* This Agreement and the Schedule annexed hereto exclusively and completely state the rights of the Builder and the Railroad with respect to the Equipment and supersede all other agreements, oral and written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 28. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any or its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, and also any such assignors, severally, as regards any rights hereunder that are retained and excluded from such assignment; and the term "Builder" whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business. The term "Cut-Off Date", whenever used in this Agreement, shall mean September 1, 1970, or such later date as may be fixed by the Railroad in a written notice to the Vendor, delivered not less than thirty (30) days prior to September 1, 1970; *provided, however,* that in no event shall the Cut-Off Date be later than December 1, 1970.

ARTICLE 29. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of March 15, 1970, for convenience, 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 these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

CUSTOM SERVICES CORP.

By .....
President

[CORPORATE SEAL]

Attest:

.....
Secretary

SOUTHERN RAILWAY COMPANY

By .....
Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

STATE OF FLORIDA }
COUNTY OF DUVAL } SS.:

On this 13th day of May, 1970, before me personally appeared H. A. BASS, to me personally known, who, being by me duly sworn, says that he is President of CUSTOM SERVICES CORP., 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. Bonny
Notary Public

[NOTARIAL SEAL]

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES FEBRUARY 20, 1972

DISTRICT OF COLUMBIA

On this 18th day of May, 1970, before me personally appeared JAMES S. CROW, to me personally known, who, being by me duly sworn, says that he is a Vice President of SOUTHERN RAILWAY COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Lawrence A. Huff
Notary Public in and for the
District of Columbia

[NOTARIAL SEAL]

LAWRENCE A. HUFF
NOTARY PUBLIC
IN AND FOR THE DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES JUNE 30, 1972

CUSTOM SERVICES — SOUTHERN RAILWAY COMPANY

SCHEDULE A

Item 1. Custom Services Corp., a Florida corporation

Item 2. 30 units to be delivered in not more than eight Groups

Item 3. P.O. Box 9548, Jacksonville, Florida 32208

SCHEDULE B

Type of Equipment	Quantity	Railroad's Car Numbers (Both Inclusive)	Base Price Per Unit	Aggregate Base Price	Deferred Purchase Price Per Unit	Aggregate Deferred Purchase Price	Delivery
50 ton, 41'6" low-side gondola cars	250	56,958–57,139 57,780–57,829 58,575–58,592	$3,600	$900,000	$3,000	$750,000	Commencing April, 1970

AGREEMENT AND ASSIGNMENT dated as of March 15, 1970 between CUSTOM SERVICES CORP., a Florida corporation (hereinafter called the "Builder") and MORGAN GUARANTY TRUST COMPANY OF NEW YORK, acting as Agent under an agreement dated as of March 15, 1970 (hereinafter called the "Finance Agreement") (said bank so acting hereinafter called the "Assignee").

WHEREAS, the Builder and Southern Railway Company (hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of March 15, 1970 (hereinafter called the "Conditional Sale Agreement"), covering the sale and delivery by the Builder and the purchase by the Railroad of the Equipment as that term is defined in the Conditional Sale Agreement.

NOW, THEREFORE, this Agreement and Assignment (hereinafter called the "Agreement and Assignment") Witnesseth that, in consideration of the sum of One Dollar 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:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns (*a*) all the right, title, and interest of the Builder in and to the Equipment and each unit thereof, when and as delivered and accepted, and upon payment to the Builder of the amounts required to be paid pursuant to the first paragraph of Section 6 hereof, (*b*) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to manufacture, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (*b*) and (*c*) of the third paragraph of Article 3 thereof and in the seventh paragraph of Article 17 thereof, and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Deferred Purchase Price (as therein defined) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (*c*) all of the Builder's rights (except as aforesaid), powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against such Builder for or on account of the failure of the Railroad 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 Agreement and Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligations under Articles 2, 4, 5, 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, 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 Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect and receive any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and to enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it has caused or will cause the Equipment to be constructed in accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions thereof; and that, notwithstanding this Agreement and Assignment, the Builder will perform and comply with each and all of the

covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment the Builder 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 Railroad under the Conditional Sale Agreement and that it will warrant to the Assignee that, as of the date of the Bill of Sale referred to in subparagraph (*a*) of the first paragraph of Section 6 hereof with respect to any unit of Equipment, it had legal title to such unit and good and lawful right to transfer such title and that the title to such unit was free of all claims, liens, security interests and other encumbrances of any nature resulting from anything which the Builder has done or suffered to be done, except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and 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 to the Railroad and on claims resulting from anything which the Builder has done or suffered to be done prior to the date of such Bill of Sale; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Builder covenants and 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 Deferred Purchase Price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment, to be sold by the Builder, or in respect of the delivery thereof or warranties thereof under Articles 10 and 16 of the Conditional Sale Agreement, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment, or any unit thereof, or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers. The Builder shall have no liability under the foregoing provisions of this Section 3 unless (a) the Assignee, in any such suit, proceeding or action by the Assignee, hereinabove described, promptly moves or takes other appropriate action on the basis of Article 17 of the Conditional Sale Agreement, to strike any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, and (b), upon any such denial and acceptance, the Assignee promptly notifies the Builder of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Builder is given the right by the Assignee to compromise, settle or defend against, at Builder's expense, such defense, set-off, counterclaim or recoupment. The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, 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 the Equipment, or any unit thereof, to be constructed and sold by the Builder, of any design, article or material which infringes, or is claimed to infringe, on any patent or other right, except in cases of designs specified by the Railroad and not developed or purported to be developed by the Builder, and articles and materials specified by the Railroad and not manufactured by the Builder.

The Builder agrees that any amount payable to the Builder by the Railroad, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on any of the units of Equipment.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment there will be plainly, distinctly, permanently and conspicuously placed and fastened on each side thereof a metal plate bearing the following legend, or such legend shall be otherwise plainly, distinctly, permanently and conspicuously marked on each side thereof, in either case in letters not less than one-half inch in height:

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, AGENT, OWNER

SECTION 5. Upon request of the Assignee, its successors and assigns, the Builder 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 6. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to each Group (as defined in said Article 3) of the Equipment, shall pay to the Builder the Deferred Purchase Price of each unit of Equipment included in such Group, provided there shall have been delivered to the Assignee, at least five business days prior to such Closing Date, in such number of counterparts as may reasonably be requested, the documents hereinafter enumerated in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(*a*) A Bill of Sale from the Builder to the Assignee, evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad 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 Railroad under the Conditional Sale Agreement and warranting to the Assignee that as of the date thereof, the Builder had legal title to such units and good and lawful right to transfer such title and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature resulting from anything which the Builder has done or suffered to be done, except only the rights of the Railroad under the Conditional Sale Agreement;

(*b*) A certificate or certificates signed by an officer of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad in accordance with the Conditional Sale Agreement, have been inspected and accepted on behalf of the Railroad, conform to the specifications applicable thereto and to all applicable Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads, reasonably interpreted as being applicable to such equipment, and are marked in accordance with Section 4 hereof;

(*c*) A duplicate invoice or invoices for the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(*d*) An opinion, dated the Closing Date, of Davis Polk & Wardwell, who are acting as special counsel for the Assignee, stating that (*i*) the Finance Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument of such parties enforceable in accordance with its terms, (*ii*) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a valid and binding instrument enforceable in accordance with its terms, (*iii*) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a valid and binding instrument enforceable against the Builder in accordance with its terms, (*iv*) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment.

(*v*) title to the units of Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (*vi*) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, this Agreement and Assignment or the Finance Agreement, (*vii*) the Conditional Sale Agreement and this Agreement and 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 the District of Columbia, and (*viii*) the opinions referred to in paragraphs (*e*) and (*f*), respectively, of this Section 6 are satisfactory in form and substance and the Assignee is justified in relying thereon; *provided, however,* that in furnishing the said opinion said counsel may rely on counsel referred to in paragraph (*e*) of this Section 6 as to the due authorization, execution and delivery by the Builder of the Conditional Sale Agreement and of this Agreement and Assignment and as to the title of the Builder to the units of the Equipment and as to such units being free, at the time of delivery thereof to the Railroad, of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and such counsel may also rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of local counsel and of counsel for the Builder or counsel for the Railroad as to such matter;

(*e*) An opinion of counsel for the Builder, dated such Closing Date, stating that (*i*) the Builder is a duly organized and existing corporation in good standing under the laws of its state 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 and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (*iii*) this Agreement and Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (*iv*) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Agreement and Assignment; and (*v*) title to the units of the Equipment in such Group has been validly vested in the Assignee, and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement and such units, as of the date of the Bill of Sale referred to in subparagraph (*a*) of the first paragraph of this Section 6, were free of all claims, liens, security interests and other encumbrances of any nature resulting from anything which the Builder has done or suffered to be done, except only the rights of the Railroad under the Conditional Sale Agreement; *provided, however,* that in furnishing such opinion said counsel may rely, as to facts upon which such opinion is based, on certificates of responsible officers of the Builder;

(*f*) A favorable opinion of counsel for the Railroad, dated the Closing Date, covering the matters referred to in clauses (*vi*) and (*vii*) of paragraph (*d*) of this Section 6, and stating that (*i*) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia and has the power and authority to own its properties and to carry on its business as now conducted, (*ii*) the Finance Agreement and the Conditional Sale Agreement have been duly authorized, executed and delivered by the Railroad and are valid instruments binding upon the Railroad and enforceable against the Railroad in accordance with their terms and (*iii*) title to the units of Equipment in the Group is validly vested in the Assignee, free of all claims, liens, security interests and other encumbrances, except only the rights of the Railroad under the Conditional Sale Agreement;

(g) Unless payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraphs (b) and (c) of the third paragraph of Article 3 of the Conditional Sale Agreement is made by the Assignee through the use of funds furnished to it for that purpose by the Railroad, a counterpart of a receipt from the Builder acknowledging such payment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference as to limitations as to enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. Any opinion delivered hereunder after the first Closing Date may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore delivered hereunder without repeating the substance of such earlier opinion.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of any of the Equipment not delivered on or before the "Cut-off Date" (as defined in the Conditional Sale Agreement), and any of the Equipment not so delivered shall be excluded from the Conditional Sale Agreement and not included in the term "Equipment" as used in the Conditional Sale Agreement and in this Agreement and Assignment.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee under the Finance Agreement with respect thereto.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while 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 be subsisting under the Conditional Sale Agreement.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays or days on which banking institutions are authorized by law to close.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof.

SECTION 7. 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 Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

In compliance with Article 17 of the Conditional Sale Agreement the address of the Assignee for purposes of notices and payments is 23 Wall Street, New York, N. Y. 10015, Attention: Corporate Trust Department, or such other address as the Assignee may have furnished in writing to the Railroad.

SECTION 8. The Builder hereby:

(a) Represents and warrants to the Assignee, its successors and assigns that the Conditional Sale Agreement was duly authorized by the Builder and lawfully executed and delivered by the Builder for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that, assuming valid authorization and execution by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

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

SECTION 9. This Agreement and Assignment shall be construed in accordance with the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

SECTION 10. This Agreement and Assignment 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 instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated as of March 15, 1970, for convenience, 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 these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[CORPORATE SEAL]

CUSTOM SERVICES CORP.

By .....
President

Attest:

Mildred Branch .....
Secretary

[CORPORATE SEAL]

MORGAN GUARANTY TRUST COMPANY OF NEW YORK, as Agent

By .....
Trust Officer

Attest:

K.F. Brennan .....
K.F. BRENNAN *Assistant Secretary*

STATE OF FLORIDA }
COUNTY OF DUVAL } ss.:

On this 13th day of May, 1970 before me personally appeared H.A. BASS, to me personally known, who being by me duly sworn, says that he is President of CUSTOM SERVICES CORP., 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. Barry
Notary Public

[NOTARIAL SEAL]

NOTARY PUBLIC, STATE OF FLORIDA AT LARGE
MY COMMISSION EXPIRES FEBRUARY 20, 1972

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

On this 7th day of May, 1970 before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, 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.

Frank Schlierf
Notary Public

[NOTARIAL SEAL]

FRANK SCHLIERF
NOTARY PUBLIC, State of New York
No. 60-3503450
Qualified in Westchester County
Certificate filed in New York County
Commission Expires March 30, 1971

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN RAILWAY COMPANY hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment and receipt of an executed copy thereof.

SOUTHERN RAILWAY COMPANY

By .....

Vice President

Dated: MAY 18 1970