

Executed in 10

Counterparts

RECORDATION NO. 5733 Filed & Recorded

Counterpart No. 6

JUN 26 1970 -2 11 PM

INTERSTATE COMMERCE COMMISSION

Conditional Sale Contract

DATED AS OF JUNE 1, 1970

BETWEEN

M. L. C. EQUIPMENT COMPANY

AND

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

—
FOR PURCHASE OF
500 FREIGHT-TRAIN CARS
—

Assignment of Conditional Sale Contract

DATED AS OF JUNE 1, 1970

FROM

M. L. C. EQUIPMENT COMPANY

TO

LA SALLE NATIONAL BANK

CONDITIONAL SALE CONTRACT

CONDITIONAL SALE CONTRACT, dated as of June 1, 1970, by and between **M. L. C. EQUIPMENT COMPANY**, an Illinois corporation (hereinafter sometimes called "Vendor"), and **CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY**, a Wisconsin corporation (hereinafter called "Vendee").

WHEREAS, Vendor and Vendee concurrently herewith have entered into a certain Contract for Purchase and Construction, dated as of the date hereof (hereinafter called "Purchase and Construction Contract"), under which Vendee agrees to sell and deliver to Vendor, and Vendor agrees to purchase from Vendee, certain freight-train cars and Vendee agrees thereafter to repair, rehabilitate and/or convert said cars for Vendor on the terms and conditions set forth; and

WHEREAS, Vendor desires to sell and deliver to Vendee, and Vendee desires to purchase from Vendor said freight-train cars as repaired, rehabilitated and/or converted in accordance with the Purchase and Construction Contract, on the terms and conditions hereinafter set forth;

Now, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

1. Vendor agrees to sell and deliver to Vendee, and Vendee agrees to purchase from Vendor and pay for, all as more specifically provided, five hundred (500) freight-train cars which shall be acquired by Vendor and shall be repaired, rehabilitated and/or converted under the provisions of the Purchase and Construction Contract and shall be numbered at the time of delivery hereunder as set forth in Schedule I hereto. The cars are hereinafter collectively called the "Equipment". Vendor agrees to deliver and Vendee agrees to accept delivery of the Equipment from time to time as units thereof are repaired, rehabilitated and/or converted in accordance with the Purchase and Construction Contract.

From time to time as any units of Equipment shall have been repaired, rehabilitated and/or converted in conformity with the Purchase and Construction Contract and shall have been inspected and accepted by Vendor under the Purchase and Construction Contract, Vendor and

Vendee shall enter into a Certificate of Acceptance substantially in the form of Exhibit A hereto, with appropriate insertions, evidencing Vendee's acceptance of such units under this Agreement. When a Certificate of Acceptance shall have been entered into with respect to any unit of Equipment, but not before this Agreement shall have been duly filed for record with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended, Vendor shall deliver such units of Equipment to Vendee in Milwaukee, Wisconsin. Vendor will use its best efforts to deliver all of the Equipment on or before May 31, 1971, provided that no delay for any reason in the delivery of any unit(s) thereof beyond said date shall relieve Vendee from its obligation to accept delivery of such unit(s) hereunder, it being understood that Vendee's sole remedy in the event of such delay shall be in damages against Vendor, for the breach, if any, of the aforesaid covenant to use best efforts.

2. *Purchase Price and Installment Payments.* The Aggregate purchase price of the Equipment shall be \$2,005,000. The respective purchase prices for each unit of the Equipment shall be \$3,940 for each 40-foot box car hereinafter listed and described and \$4,290 for each 8-stake log flat car hereinafter described. Said aggregate purchase price shall be paid to Vendor by Vendee in 13 consecutive semi-annual installments. The first installment in the amount of \$154,240 shall be payable on June 1, 1971 (notwithstanding that any or all of the Equipment shall not have been delivered hereunder on or before said date) and the remaining installments each in the amount of \$154,230 shall be payable on the first day of each June and December thereafter, the last installment being payable on June 1, 1977. Vendee also agrees to pay Vendor from time to time and in sufficient time to enable Vendor to make timely payment thereof, the amounts which Vendor is obligated to pay as interest on amounts borrowed by Vendor pursuant to the provisions of subsection B of Section 3 of that certain written Equipment Loan Agreement, dated as of June 1, 1970, between Vendor and La Salle National Bank, (hereinafter the "Bank"), relating to the Equipment. Such interest shall be computed on the basis of a 360-day year of twelve 30-day months. Vendee also agrees to pay Vendor,

from time to time and in sufficient time to enable Vendor to make timely payment thereof, the amounts which Vendor is obligated to pay as a commitment fee and as interim interest on amounts borrowed by Vendor prior to June 1, 1971, pursuant to the provisions of subsection B of Section 3 of said Equipment Loan Agreement, dated as of June 1, 1970, by and between the Vendor herein and the Bank relating to the Equipment herein. If any payments shall become due on Saturday, Sunday or other legal holiday in the State of Illinois it shall be payable on the next succeeding business day.

Subject to Section 5 hereof, all payments provided for in this Agreement shall be made in Chicago funds by Vendee to Vendor at the office of Vendor in Chicago, Illinois, or at such bank or trust company as Vendor shall specify, in such coin or currency of the United States of America as at the time of payment is legal tender for public and private debts.

3. *Payment of Taxes and Liens.* All payments by Vendee hereunder shall be free of expense to Vendor for collection or other charges and no deductions shall be made therefrom in respect of any Federal, state or other taxes, assessments or governmental charges, levied or imposed upon the Equipment, or upon the selling, shipment, delivery or use thereof, and Vendee hereby agrees to pay to or for Vendor (in addition to the above-mentioned purchase price of the Equipment) all sales, gross receipts, gross income, and use taxes, or like taxes or charges (other than state and Federal income taxes), including interest and penalties, if any, which may be assessed, levied, or imposed upon or with respect to the sale or delivery of the Equipment or any portion thereof by Vendee to Vendor under the Purchase and Construction Contract or the sale or delivery by Vendor to Vendee hereunder, or the use by Vendee, of the Equipment, or any thereof, and which Vendor may be legally obligated to pay.

Vendee shall also pay promptly all taxes, assessments and governmental charges (other than state and Federal income taxes imposed on Vendor) which from time to time may be imposed by any Federal, state, county, municipal or other governmental taxing authority upon

all or any of the Equipment, or the earnings arising therefrom, or the operation thereof, or upon Vendor by reason of its ownership thereof, or upon Vendee by reason of its use thereof or interest therein.

Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under Vendee or its successors or assigns which, if unpaid, might become a lien or charge upon the Equipment, or any unit thereof, but shall not be required to pay any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner unless, in the judgment of Vendor, its rights and interest in the Equipment may be materially endangered by such delay; provided, however, that the foregoing covenant to pay, satisfy and discharge such sums shall not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, which are not due and delinquent, or by undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens, arising in the ordinary course of business and not delinquent.

4. *Possession.* So long as there shall be no default under this Agreement, Vendee shall be entitled to the possession and use of the Equipment upon the railroad lines owned or operated by Vendee or over which Vendee has trackage rights, and shall be entitled to permit the Equipment or any part thereof to be used by any railroad company or shipper or other person over railroad lines of public carriers in North America in the usual interchange of traffic and may receive compensation for such use.

5. *Assignment by Vendor.* All or any of the rights of Vendor under this Agreement, including the right to receive the payments herein provided to be made by Vendee, may be assigned by Vendor and reassigned by any assignee at any time and from time to time; provided, however, that no such assignment shall subject any assignee to, or relieve Vendor from, any of Vendor's obligations hereunder to sell and deliver the Equipment, or from any other duty, obligation or liability whatsoever under this Agreement (including, without limiting the generality of the foregoing, any of Vendor's obligations contained in Section 12 and 16 hereof).

In the event of any such assignment, the assignor or assignee shall furnish a counterpart or copy of such assignment to Vendee, together with written notice of assignment containing such information as may be necessary to apprise the Vendee of the identity and post office address of the assignee. Such assignee shall, by virtue of such assignment, acquire all of Vendor's rights and interests under this Agreement and all of Vendor's rights, title and interest in and to the Equipment and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of any such written notice of assignment, and until Vendee shall be otherwise directed in writing by such assignee, all payments thereafter to be made by Vendee hereunder shall be made to such assignee at the post office address set forth in such written notice.

Vendee understands that Vendor contemplates assigning this Agreement or some or all of the rights of Vendor hereunder. For the purpose of assurance to any person, firm or corporation considering the acceptance of the assignment of this Agreement or any of the rights of Vendor hereunder, and for the purpose of inducing such acceptance, Vendee covenants and agrees that in the event this Agreement is assigned or any amounts payable hereunder are assigned by Vendor, or reassigned by any assignee as herein provided, neither the obligation of Vendee to pay the entire purchase price of the Equipment nor the obligation to pay each installment thereof, together with interest thereon, as and when such installment shall become due and payable as herein provided, nor any other obligation of Vendee hereunder, nor any right of such assignee hereunder, shall be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of or by reason of (i) the failure of Vendor to deliver all or any of the Equipment hereunder, (ii) any delay in connection with such delivery or in respect of any of Vendor's obligations contained in Section 12 or 16 hereof, (iii) any defect in Vendor's title to the Equipment or any interruption or termination of Vendee's possession of the Equipment or any part thereof (unless caused by the wrongful act of such assignee), (iv) the fitness, design, quality or condition of the Equipment or any part thereof, (v) otherwise under or in respect of this Agreement or the Equipment or (vi) any other indebtedness or

liability at any time owing to Vendee by Vendor or by any prior assignee.

The term "Vendor", whenever used in this Agreement, means before any assignment of any rights of Vendor hereunder, M. L. C. Equipment Company, and after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights (but not as regards any obligations or liabilities of Vendor) and also any assignor as regards any rights hereunder that are retained and excluded from any assignment. With respect to all obligations and liabilities of Vendor hereunder, "Vendor" shall mean only M. L. C. Equipment Company both before and after any such assignment. "M. L. C. Equipment Company", as used herein, shall include any successor to the business and properties of M. L. C. Equipment Company, but shall not include any assignee of any of Vendor's rights hereunder.

6. *Marking of Equipment.* Before delivery of the Equipment to Vendee, Vendor will mark or cause to be marked an appropriate legend upon each side of each unit of Equipment pursuant to Section 1(d) of Part II of the Purchase and Construction Contract, in letters not less than one inch in height, and the Equipment will bear the car numbers as set forth in Schedule I to this Conditional Sale Contract. Such marking will be so located as to be readily visible and to indicate plainly the ownership of said Equipment, and Vendee agrees to renew such marking on any unit of Equipment whenever such unit of Equipment is put into shops for repair or for repainting, and, in any event, to maintain such marking so as to be completely legible at all times. In case, during the continuance of this Agreement, such markings shall at any time be removed, defaced or destroyed, Vendee shall immediately at its own cost, cause the same to be restored or replaced; and if by reason of change of law or otherwise, additional or other markings shall be required to protect the interests of Vendor, Vendee shall provide and install and thereafter maintain the same on all the Equipment. Vendee agrees that it will keep the Equipment free from any encumbrance or lien which might be a cloud upon or otherwise affect Vendor's title, and will not allow the name of any person, association

or corporation to be placed on any unit of Equipment as a designation which might be interpreted as a claim of ownership thereof by any person, association or corporation other than Vendor or its assignee; provided, however, Vendee may letter the Equipment "Chicago, Milwaukee, St. Paul and Pacific Railroad Company", or "CMST.P&P" or in some other appropriate manner for convenience of identification of the interest of Vendee or its successor or successors in the Equipment but not in such manner as might be interpreted as a claim of ownership thereof by Vendee or any person other than Vendor or its assignee. Vendee agrees that it will keep the Equipment marked with the car numbers as hereinabove in this Section 6 provided, and that it will not change, or permit to be changed, the numbers upon any unit of Equipment, except with the prior written consent of Vendor in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with Vendor by Vendee and recorded or filed at Vendee's sole expense in each public office where this Agreement shall have been recorded or filed. Vendee agrees, upon Vendor's request, but at least once in every year during the continuance of this Agreement, to furnish an accurate inventory of the Equipment.

In the event of a transfer or assignment, or successive transfers or assignments by Vendor or its assignees, of title to the Equipment, Vendee, whenever requested by any such transferee or assignee, shall change the ownership markings on all the Equipment to indicate the title of such transferee or assignee to the Equipment and its succession to rights of Vendor hereunder.

7. *Damage, Repair and Replacement.* Vendee agrees that it will keep the Equipment in good order and repair at its sole expense and will comply with all applicable laws and regulations of any governmental authority with reference to the Equipment or the manner of using or operating the same and in the event that said laws and regulations require the alteration of the Equipment, Vendee agrees to conform therewith at its sole expense. Without limiting the generality of the preceding sentence, Vendee will make or cause to be made, all repairs and changes in the Equipment necessary to make the Equip-

ment comply with the Code of Rules of the Association of American Railroads Governing the Condition of and Repair to Freight and Passenger Cars for the Interchange of Traffic, as such rules and any amendments, supplements and substitutions thereto and therefor shall be applicable from time to time and with all rules and regulations of any governmental authority or authorities as shall be applicable from time to time; provided that Vendee may in good faith contest the validity of any such rules and regulations in any reasonable manner which will not, in the judgment of Vendor, materially endanger Vendor's rights and interests.

Vendee agrees that it will, subject to the provisions of Section 12 hereof, indemnify and save Vendor harmless from any and all liabilities, damages, claims, suits, judgments, costs and expenses that may arise from the use, possession or operation of the Equipment from and after the time of its delivery to and acceptance by Vendee pursuant to this Agreement, and said covenant of indemnity shall continue in 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.

In the event of loss or destruction of, or irreparable damage to, any unit of the Equipment for any cause whatsoever after delivery thereof to Vendee, Vendee shall promptly and fully inform Vendor in regard to such loss, destruction, or damage, and Vendee shall promptly prepay to Vendor a sum equal to the quotient of the then unpaid balance of the aggregate purchase price divided by the sum of said unit plus the total number of the units of Equipment in respect of which no prepayment has been made pursuant to this paragraph, which amount so prepaid shall be applied to payment of installments of purchase price payable hereunder in the inverse order of their maturity, whereupon such unit of Equipment shall cease to be subject hereto and Vendor's rights therein shall terminate.

Vendor shall have the right, but shall be under no obligation, to inspect the Equipment at the then existing locations thereof, at any reasonable time or times during the continuance of this Agreement.

8. *Title to the Equipment.* Vendor shall and hereby does retain the full legal title to all the Equipment until Vendee shall have made all the payments and shall have kept and performed all the agreements in this Agreement provided to be made, kept or performed by Vendee, notwithstanding the delivery of the Equipment to, and the possession and use thereof by, Vendee. Any and all replacements of parts of the Equipment, and additions thereto, shall constitute accessions to the Equipment and be subject to all the terms and conditions of this Agreement and include in the term "Equipment" as used in this Agreement. When and only when Vendee has paid the full purchase price of all the Equipment, and has made all other payments as herein provided, title to all the Equipment shall pass to and vest in Vendee without further transfer or act on the part of Vendor.

9. *Recording.* No unit of Equipment listed in Schedule I hereto shall be delivered to Vendee hereunder unless this Agreement shall have been theretofore duly filed for record with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended. Vendee shall, at its own expense, file, or cause to be filed, this Agreement, all amendments or supplements hereto, or to Schedule I hereto, and the first assignment hereof; and Vendee shall, at its sole expense, from time to time, effect any further filings or recordings of this Agreement and any amendments or supplements hereto or to Schedule I hereto, and do and perform any other acts, and execute, acknowledge, deliver, file, register and record any and all further instruments as may be required by law or reasonably requested by Vendor for the purpose of protecting Vendor's title and rights or carrying out the intention of this Agreement; and Vendee will promptly furnish to Vendor certificates or other evidence of all such filings, registration and recording, satisfactory to Vendor.

10. *Unauthorized Assignment by Vendee.* Vendee will not sell, assign, transfer or otherwise dispose of its rights, interest and obligations under this Agreement or transfer the right to possession of the Equipment without first obtaining the written consent of Vendor. The appointment of a temporary receiver or receivers in equity or a tem-

porary trustee or trustees in bankruptcy for Vendee or for any substantial part of its property shall not be deemed an unauthorized assignment by Vendee of its rights, interests and obligations hereunder and shall not be deemed a breach of this covenant, but the appointment of a permanent receiver or receivers in equity or permanent trustee or trustees under any provisions of the Bankruptcy Act or under any amendment or revision thereof for Vendee or for any substantial part of its property shall be deemed an unauthorized assignment and a breach of this covenant unless such permanent receiver or trustee shall be discharged within thirty days.

11. *Remedies in Case of Default.* In case

(a) Vendee shall default in the payment of any sum payable by Vendee as herein provided and such default shall continue for at least five (5) days after the same shall become due and payable, or

(b) A default shall occur through a breach of the covenant of Section 10 of this Agreement, or

(c) Any indebtedness of Vendee for borrowed money becomes or is declared to be due and payable prior to its expressed maturity by reason of any default in the performance or observance of any obligation or condition, or

(d) Vendee shall, for more than 30 days after Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other of the terms and agreements herein on its part to be kept and performed, or to make provision satisfactory to Vendor for such compliance, or

(e) Vendee becomes insolvent or admits in writing its inability to pay its debts as they mature or applies for, consents to or acquiesces in the appointment of a trustee or receiver for its property; or in the absence of such application, consent or acquiescence, a trustee or receiver is appointed for Vendee or for a substantial part of its property and is not discharged within thirty (30) days; or any bankruptcy, reorganization, debt arrangement, or other proceeding under any bankruptcy or insolvency law, or any dissolution or liquidation proceeding is instituted by or against Vendee, and if so instituted against the Vendee is not dismissed within thirty

(30) days; or the Vendee makes an assignment for the benefit of its creditors;

then in any such case (herein called "default") Vendor may, by written notice to Vendee, declare the entire unpaid balance of the purchase price of the Equipment immediately due and payable and upon any such declaration the entire unpaid balance of the purchase price of the Equipment and all other sums owing hereunder shall forthwith become due and payable. Such balance of the purchase price shall bear interest from the date of such declaration at the rate of 9% per annum and Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Equipment so payable, with interest thereon as aforesaid and any other interest or obligations as may be payable hereunder, and to collect such judgment out of any property of Vendee wherever situated. Vendor may, at its election, waive any such default and its consequences and rescind and annul any such declaration, by written notice to Vendee, but no such waiver, rescission and annulment shall extend to or affect any subsequent default or impair any rights or remedies consequent thereon. If Vendee shall default as hereinabove provided, then, at any time after such declaration (unless the entire purchase price of the Equipment and all indebtedness and obligations of Vendee hereunder shall have been paid and satisfied in full) of default and during and upon compliance with any mandatory requirement of law applicable to the action to be taken by Vendor, Vendor at its option may take or cause to be taken by its agent or agents immediate possession of the Equipment and may lease or sell, at public or private sale, the Equipment or any portion thereof free from all rights and claims of Vendee or anyone claiming by, through, under, or against Vendee at law or in equity, upon such terms and in such manner as Vendor may determine, either without or before or after taking possession of the Equipment and without having the Equipment at the place of sale but all subject to any mandatory requirements of law applicable thereto. To the extent not prohibited by any legal requirements then in force and applicable to such sale, Vendor may itself bid for and become the purchaser of the Equipment

or any portion thereof offered for sale without accountability to Vendee (except to the extent of surplus money received as hereinafter provided in this paragraph) and in payment of such purchase price Vendor shall be entitled to the extent aforesaid to have credited on account thereof all sums due to Vendor from Vendee. The proceeds of any such lease or sale after deducting all charges and expenses, including counsel fees, incurred in connection therewith shall be applied to the payment, first, of the expenses of retaking, keeping and storing the Equipment, second, of any commitment fee or interest payment payable to the assignee by Vendor and which Vendee has agreed to pay to Vendor as provided in Section 2 hereof, third, of the purchase price of the Equipment and any interest accrued thereon, and fourth, of all other sums payable by Vendee hereunder. If any surplus of such proceeds remains after the payment of the sums hereinabove mentioned, Vendor agrees to pay such surplus to Vendee; and in case of a deficiency, Vendee agrees to pay such deficiency forthwith to Vendor. If Vendee fails to pay such deficiency Vendor may bring suit therefor and shall be entitled to recover judgment therefor against Vendee.

In case Vendor shall rightly demand possession of the Equipment or lease or sell the Equipment pursuant to this Agreement, and shall reasonably designate a point or points for the delivery of the Equipment to it or to the purchaser or lessee of the Equipment, Vendee will, at its own expense, forthwith and in the usual manner and at the usual speed cause the Equipment to be moved to such point or points and will there deliver the same to Vendor or to such purchaser or lessee and Vendor or such purchaser or lessee shall have the right to enter upon the premises of Vendee and retake the Equipment wherever the same may be found and to store the Equipment upon the premises of Vendee without charge, until the removal thereof can conveniently be arranged and made. The gathering and delivery of the Equipment as hereinbefore provided are of the essence of this Agreement and upon application to any court of equity having jurisdiction in the premises, Vendor shall be entitled to a decree requiring specific performance of such acts. Vendee expressly waives any and all claims against Vendor and its agent or agents for damages of whatever nature in connection

with any retaking of the Equipment. Vendee agrees that neither upon the retaking of the Equipment by Vendor or the purchaser or lessee thereof in the event of a default hereunder by Vendee nor as condition precedent to such retaking shall Vendor be required to refund to Vendee any portion of the purchase price of the Equipment theretofore paid by Vendee and Vendee expressly waives, to the extent permitted by law, any right it may have by law or by statute to the return of any part of such purchase price upon the retaking of the Equipment by Vendor or such purchaser or lessee thereof as aforesaid. The sale, lease or retaking of the Equipment shall not affect any right or cause of action which Vendor may have or release Vendee from any obligation or liability upon or under this Agreement.

Vendee will pay all reasonable attorneys' fees incurred by Vendor in enforcing its remedies under the terms of this Agreement. In the event that Vendor brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Vendor may recover reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

If Vendee shall refuse or fail to perform any agreement herein on its part to be performed, Vendor may perform the same and give to Vendee notice in writing of the expense incurred in such performance and Vendee agrees to repay promptly after such notice all expenses so incurred with interest at the rate of 9% per annum.

The powers and remedies herein provided in case of default are not to be exclusive of any other powers or remedies now or hereafter existing at law or in equity or under any statute. No delay or omission of Vendor in the exercise of any power or remedy shall be deemed to be a waiver of any default or of the right to exercise such power or remedy, nor shall the acceptance by Vendor of any security or of any payment of or on account of any installment of the purchase price of the Equipment or of interest thereon maturing or accruing after any default or of any payment on account of any past default be deemed a waiver of any right to take advantage of any other past or any future default.

12. *Patents.* Vendor shall assume all responsibility for and save Vendee harmless from any and all damages, costs, royalties and claims arising out of charges of infringement of patents which may be alleged to cover the Equipment, articles, or parts thereof, excepting those patents covering the manufacture, sale or use in the Equipment, articles, or parts thereof, of designs, devices, parts, arrangements, specialties and equipment furnished or specified by Vendee and as to such excepted patents Vendee in like manner shall assume responsibility and save Vendor harmless. Prompt notice in writing shall be given by each party to the other of any claim of patent infringement presented to such party with respect to said Equipment, articles, or parts thereof, and the party responsible for such infringement as above provided, shall promptly undertake and assume the defense thereof.

13. *Opinion of Vendee Counsel.* Upon the request of Vendor, at any time or times, Vendee shall deliver to Vendor a letter of opinion of counsel satisfactory to the Vendor, who may be counsel for Vendee, addressed to Vendor, stating that this Agreement is a legal and valid obligation and undertaking of Vendee and is not in conflict with any provision of law or of the charter or by-laws of Vendee nor in conflict with any agreement, indenture, instrument, decree, order, or legal requirement binding upon Vendee; that approval and authorization of all governmental bodies or authorities necessary for the validity of this Agreement or for the enforceability of any obligation or duty thereunder have been obtained; and that Vendee is a corporation duly organized and existing in good standing under the laws of the State of Wisconsin.

14. *Conflicting State Laws.* Any provisions of this Agreement prohibited by any applicable law of any state or of the District of Columbia or which by any applicable law of any state or of the District of Columbia would convert this Agreement into an instrument other than an agreement of conditional sale, shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived they are hereby waived by Vendee to the full extent permitted by law.

15. *Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Vendor shall impair or affect Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to Vendee shall not otherwise alter or affect Vendor's rights or Vendee's obligations hereunder. Vendor's acceptance of any payment after it becomes due hereunder shall not be deemed to alter or affect Vendee's obligations or Vendor's rights hereunder with respect to any subsequent payments or default therein.

16. *Warranty and Disclaimer.* Vendor warrants that at the time of delivery of any unit of Equipment to Vendee hereunder, Vendor will have title thereto free and clear of all liens and encumbrances of any nature, except the rights of Vendee as conditional vendee under this Agreement and of anyone claiming under Vendee as such conditional vendee. Except as stated in the preceding sentence, Vendor makes no warranty or representation of any kind whatsoever, either express or implied, as to any matter whatsoever, including specifically but not exclusively, fitness, design, condition or quality of the Equipment, or any parts thereof, delivered to Vendee in the manner provided for herein.

17. *Modification of Agreement.* There are no understandings or agreements, express or implied, not specified or referred to herein. No modification of this Agreement shall be valid unless made by written instrument duly executed by Vendor and Vendee.

18. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the law of the State of Illinois; but Vendor shall be entitled to such additional rights arising out of the filing or recording hereof and of any assignment hereof as shall be conferred by the laws of the jurisdiction or jurisdictions in which this Amendment or any assignment thereof shall be filed or recorded.

19. *Successors and Assigns.* This Agreement shall be binding upon Vendor and upon Vendee and Vendee's successors and assigns

and (except as herein otherwise expressly provided) shall inure to the benefit of Vendee, and Vendor and Vendor's successors and assigns.

20. *Payment of Expenses.* Vendee will pay all reasonable costs, charges and expenses incident to the execution, acknowledgment, delivery, filing, recording or depositing of this Agreement and of the first assignment of this Agreement by Vendor and of any amendment or supplement hereof. In addition, Vendee will pay all reasonable costs, charges and expenses of the first assignee of this Agreement and of any parties acquiring interest in such first assignment concurrently with such first assignment, including any stamp or other taxes payable by such first assignee or by such other parties and any interest and penalty payable in addition to the amount of any such tax.

21. *Notices, How Served.* All notices, requests and consents hereunder shall be in writing and shall be effective at the earlier of (i) receipts thereof (ii) deposit in the United States registered or certified mail, postage prepaid, addressed to the other party at its respective address as follows:

M.L.C. Equipment Company
516 West Jackson Boulevard
Room 888
Chicago, Illinois 60606

Chicago, Milwaukee, St. Paul and Pacific Railroad
Company
516 West Jackson Boulevard
Room 746
Chicago, Illinois 60606

22. *Section Headings.* All section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

23. *Counterparts.* This Agreement may be executed in two or more 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. Although this Agreement is dated for convenience as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, M.L.C. Equipment Company, and Chicago, Milwaukee, St. Paul and Pacific Railroad Company have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

M.L.C. Equipment Company

By *[Signature]*
Vice President—
Finance and Accounting

[SEAL]

ATTEST:

..... *J. J. [Signature]*
Secretary.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY

By *[Signature]*
Vice President—
Finance and Accounting

[SEAL]

ATTEST:

..... *J. J. [Signature]*
Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

On this 14th day of June, 1970, before me personally appeared R. F. Kratochwill, to me personally known, who being by me duly sworn says that he is Vice President—Finance and Accounting of M. L. C. Equipment 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.

(NOTARIAL
SEAL)

Ruff Gangerberg
Notary Public

My Commission expires Nov. 16, 1971

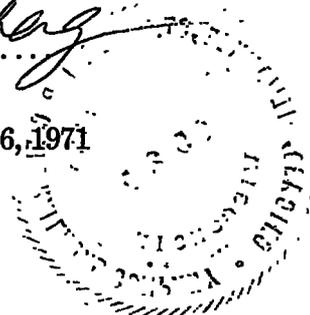
STATE OF ILLINOIS }
COUNTY OF COOK } ss:

On this 14th day of June, 1970, before me personally appeared R. F. Kratochwill, to me personally known, who being by me duly sworn says that he is Vice President—Finance and Accounting of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL
SEAL)

Ruff Gangerberg
Notary Public

My Commission expires Nov. 16, 1971



CERTIFICATE OF ACCEPTANCE

In accordance with the requirements of the Conditional Sale Contract dated as of June 1, 1970, entered into between the parties hereto, and the assignment of M. L. C. Equipment Company's rights thereunder dated as of June 1, 1970, from M. L. C. Equipment Company to LA SALLE NATIONAL BANK (hereinafter called the "Bank") the parties hereto represent, covenant and agree between themselves and to and for the benefit of the Bank as follows:

1. M. L. C. Equipment Company has submitted to Vendee for inspection, and Vendee has inspected, *(40-foot box cars), *(8-stake log flat cars) which bear the following car numbers:

[List Type and Car Numbers]

2. The repair, rehabilitation or conversion of all of said Cars, as contemplated in said Conditional Sale Contract, has been completed; each of said Cars conforms in all respects to the requirements and provisions of said Conditional Sale Contract; and Vendee has accepted (and does hereby accept) each of said Cars under said Conditional Sale Contract.
3. None of the Cars has been delivered to Vendee prior to the time that said Conditional Sale Contract was filed for record with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, as amended.
4. There is plainly, distinctly, permanently and conspicuously stenciled on each side of each of said Cars the following legend:
"LA SALLE NATIONAL BANK (AS ASSIGNEE OF M. L. C. EQUIPMENT COMPANY), OWNER"

*(Strike the inapplicable designation.)

5. All of M. L. C. Equipment Company's rights under said Conditional Sale Contract have (with Vendee's consent) been assigned to the Bank; and, in furtherance and confirmation of such assignment, M. L. C. Equipment Company hereby assigns all of its rights hereunder, and Vendee hereby consents to such assignment.

Dated, 19....

M.L.C. EQUIPMENT COMPANY

By
*Vice President—
Finance and Accounting*

[SEAL]

ATTEST:

.....
Secretary

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY

By
Vice President

[SEAL]

ATTEST:

.....
Secretary

ASSIGNMENT OF CONDITIONAL SALE CONTRACT

THIS ASSIGNMENT, dated as of June 1, 1970, is made by M. L. C. EQUIPMENT COMPANY, an Illinois corporation (hereinafter called "Assignor"), to LA SALLE NATIONAL BANK, a national banking association (hereinafter called the "Assignee").

WHEREAS, Assignor has entered into concurrently herewith a certain Conditional Sale Contract, dated as of the date hereof (hereinafter called "Conditional Sale Contract"), pursuant to which Assignor agrees to sell to CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY, a Wisconsin corporation (hereinafter called "Railroad Company"), and Railroad Company agrees to buy from Assignor, 500 freight-train cars (hereinafter called the "Cars").

WHEREAS, Assignor and Assignee have entered into concurrently herewith a certain Equipment Loan Agreement, dated as of the date hereof (hereinafter called the "Equipment Loan Agreement"), providing (among other things) for assignment of the Conditional Sale Contract by Assignor to Assignee,

Now, THEREFORE, in accordance with the provisions of the Equipment Loan Agreement, Assignor hereby assigns the Conditional Sale Contract to the Assignee upon the following terms:

1. Assignor hereby assigns, transfers and sets over unto Assignee, its successors and assigns, as security for the Equipment Loan Agreement, and all principal, commitment fee, interest, premium, if any, and other indebtedness and obligations thereunder, all the right, title and interest of Assignor in and to the Conditional Sale Contract and any Certificates of Acceptance thereunder and in and to any and all amounts which may be or become due or owing to Assignor thereunder on account of the \$2,005,000 aggregate purchase price of the Cars, together with interest, and any other sums becoming due under the Conditional Sale Contract in respect of the Cars, and also all right, title and interest of Assignor in and to the Cars, together with all of Assignor's rights, powers, privileges and remedies in respect of the Cars under the

Conditional Sale Contract; provided, however, that this Assignment shall not subject the Assignee to or relieve Assignor from any of its obligations under the Conditional Sale Contract to sell and deliver Cars, or any other duty, obligation or liability whatsoever under the Conditional Sale Contract (including, without limiting the generality of the foregoing, any of Assignor's obligations contained in Sections 12 and 16 of the Conditional Sale Contract); provided, however, that this Assignment shall terminate when all principal, commitment fee, interest, premium, if any, and other indebtedness under the Equipment Loan Agreement have been paid in full, all obligations thereunder have been fully satisfied, and the Credit provided for it in the Equipment Loan Agreement has terminated. In furtherance of the foregoing assignment and transfer, Assignor hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's designee, or in the name of and as attorney, hereby irrevocably constituted, for Assignor, to ask, demand, sue for, collect, receive and enforce payment of any and all sums to which the Assignee is or may become entitled under this Assignment and all sums payable and action to be taken by Railroad Company under the Conditional Sale Contract.

2. Assignor warrants that the right, title, lien and interest in the Conditional Sale Contract assigned to Assignee hereunder is free and clear of all liens, encumbrances, charges and interests and that the right, title, lien and interest assigned to the Assignee hereunder in and to the Cars is, with respect to each and all of the Cars, free and clear of all liens, encumbrances, charges and interests, except the lien, if any, of the First Mortgage and of the General Mortgage of the Railroad Company, which liens, if any, will have been duly subordinated to the prior right of the Assignee.

Assignee agrees to execute Certificates of Acceptance from time to time as provided by Section 1 of the Conditional Sale Contract.

3. Neither the obligation of Railroad Company to pay the entire purchase price of the Cars nor the obligation to pay each installment thereof, together with interest thereon as and when such installment

shall become due and payable as required by the Conditional Sale Contract, nor any other obligation of Railroad Company thereunder, nor any right assigned to the Assignee hereunder, shall be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of the failure of Assignor to deliver any or all of the Cars thereunder or any delay in connection with such delivery, or in respect of any of Assignor's obligations contained in Sections 12 or 16 thereof, or arising out of any defect in Assignor's title to the Cars or any interruption or termination of Railroad Company's possession of the Cars or any part thereof (unless caused by the wrongful act of the Assignee), or in respect of the fitness, design, quality or condition of the Cars, or any part thereof, or otherwise under or in respect of the Conditional Sale Contract, this Assignment or the Cars, and shall not be subject to any defense, setoff, counterclaims or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Railroad Company by Assignor.

4. Assignee may assign its rights under the Conditional Sale Contract, including the right to receive any payments due or to become due to it from Railroad Company thereunder in respect to the Cars. 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 of the Assignee hereunder.

5. This Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; but Assignee shall be entitled to such additional rights arising out of the filing or recording hereof as shall be conferred by the laws of the jurisdiction or jurisdictions in which this Assignment shall be filed or recorded.

6. No modification of this Assignment shall be valid unless made by written instrument duly executed by Assignor and Assignee. No amendment or modification of or consent to any deviation from the Conditional Sale Contract shall be valid unless Assignee shall be a signatory thereto. Assignee agrees that it will not unreasonably withhold its consent to any amendment to the Conditional Sale Contract

pursuant to Section 1 thereof, the effect of which shall be solely to exclude Cars lost, destroyed, or damaged beyond economical repairs in the manner set forth in said Section 1.

7. This Assignment may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Assignment is dated for convenience as first above written, the actual date or dates of the execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, Assignor has caused this instrument to be executed in its name by its officers, thereunto duly authorized, and its corporate seal to be hereto affixed, duly attested, as of the day and year first above written.

M. L. C. EQUIPMENT COMPANY

By *[Signature]*
Vice President—
Finance and Accounting

[SEAL]

ATTEST:

[Signature]
Secretary

ACCEPTANCE OF ASSIGNMENT

The foregoing Assignment of Conditional Sale Contract is hereby accepted by the Assignee, LA SALLE NATIONAL BANK.

LA SALLE NATIONAL BANK

By *[Signature]*
Vice President

Address:
135 South La Salle Street
Chicago, Illinois 60690

[SEAL]

ATTEST:

[Signature]
Assistant Cashier

CONSENT TO ASSIGNMENT

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY hereby acknowledges receipt of the foregoing Assignment of Conditional Sale Contract ("Assignment") to LA SALLE NATIONAL BANK ("Assignee"), consents to such Assignment, and, until otherwise directed in writing by the Assignee, agrees to make all payments to be made under the Conditional Sale Contract to the Assignee at the address set forth in the foregoing Acceptance of Assignment.

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY.

By *[Signature]*
Vice President—
Finance and Accounting

[SEAL]

ATTEST:

[Signature]
Secretary

STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this 9th day of June, 1970, before me personally appeared R. F. Kratochwill, to me personally known, who being by me duly sworn says that he is the Vice President—Finance and Accounting of M. L. C. Equipment 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.

(NOTARIAL
SEAL)

M. J. Langenberg
Notary Public

My Commission expires Nov. 16, 1971

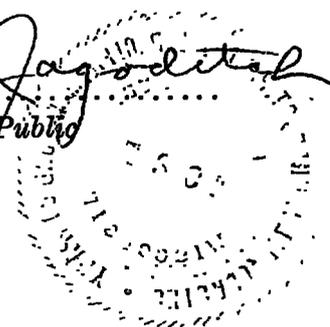
STATE OF ILLINOIS }
COUNTY OF COOK } ss

On this day of June, 1970, before me personally appeared ... Raymond E. Nelson ..., to me personally known, who being by me sworn, says that he is Vice President of La Salle National Bank, that one of the seals affixed to the foregoing instrument is the official seal of said Bank, that said instrument was signed and sealed on behalf of said Bank by authority of its By-Laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Bank.

(NOTARIAL
SEAL)

Mary Jagoditch
Notary Public

My Commission expires ~~My Commission Expires~~ July 20, 1971



STATE OF ILLINOIS }
COUNTY OF COOK } SS

On this *17th* day of June, 1970, before me personally appeared R. F. Kratochwill, to me personally known, who being by me duly sworn says that he is the Vice President—Finance and Accounting of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

(NOTARIAL
SEAL)

[Handwritten Signature]
Notary Public

My Commission expires Nov. 16, 1971

SCHEDULE I

ATTACHED TO AND FORMING A PART OF THE CONDITIONAL SALE CONTRACT, DATED AS OF JUNE 1, 1970, BETWEEN M. L. C. EQUIPMENT COMPANY AND CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY WITH RESPECT TO 500 FREIGHT-TRAIN CARS.

UNITS OF EQUIPMENT

(The term "Railroad Company" when hereinafter used, means Chicago, Milwaukee, St. Paul and Pacific Railroad Company)

400—40-foot box cars, respectively bearing the Railroad Company's serial numbers 32200 to 32499, both inclusive, and 33600 to 33699, both inclusive;

100—8-stake log flat cars, respectively bearing the Railroad Company's serial numbers 59775 to 59874, both inclusive.