



SEABOARD COAST LINE RAILROAD COMPANY

Treasury Department
P. O. Box 27581
Richmond, Virginia 23261

LEONARD G. ANDERSON
VICE PRESIDENT AND TREASURER

RECORDATION NO. 9368-14
Filed & Recorded
MAY 9 1978 -3 30 PM

May 8, 1978

3-1204110

MAY 9 1978
Date

INTERSTATE COMMERCE COMMISSION
Mr. H. Gordon Homme
Acting Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. 9368
Filed & Recorded
MAY 9 1978 -3 30 PM

Washington, D. C.

INTERSTATE COMMERCE COMMISSION

Dear Mr. Homme:

I am enclosing for filing and recordation under the provisions of Section 20c of the Interstate Commerce Act, as amended, executed counterparts Nos. 1 through 4 of a Conditional Sale Agreement and Agreement and Assignment thereof, both dated as of May 1, 1978, described in detail below. Such document provides by its terms that each counterpart shall be deemed an original and, accordingly, counterpart No. 3 may be treated as an original and the others as counterparts thereof.

1. Names and addresses of the parties to the Conditional Sale Agreement and Agreement and Assignment thereof

- (a) Builder-Assignor - Whitehead & Kales Company, 58 Haltiner Street, River Rouge, Michigan 48218 (See NOTE hereto)
- (b) Purchaser - First National Bank and Trust Company of Evanston, 800 Davis Street, Evanston, Illinois 60204
- (c) Agent-Assignee - Mercantile-Safe Deposit and Trust Company, P. O. Box 2258, Baltimore, Maryland 21203

2. Description of equipment covered by Conditional Sale Agreement

Identifying marks

"Leased from First National Bank and Trust Company of Evanston, as Trustee, and Ownership Subject to a Security Interest under the Uniform Commercial Code"

RECEIVED
MAY 9 3 23 PM '78
I.C.C.
FEE OPERATION BR.

C. Anderson
H.V. Brazley

Mr. H. Gordon Homme

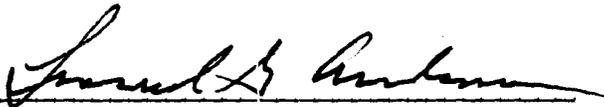
<u>General Description</u>	<u>Type of Equipment</u>	<u>A.A.R.Mech. Design.</u>	<u>Number</u>	<u>SCL Road Numbers (Inclusive)</u>
Auto Racks	Fully enclosed bi-level	None	25	B-534 through B-558

3. Counterparts Nos. 2, 3 and 4 of the above-mentioned document should be returned to Mr. Erle J. Zoll, Jr. representing the undersigned, 1000 Connecticut Avenue, N.W., Washington, D. C. 20036.

I am enclosing this company's check in the amount of \$50.00 made payable to the Commission covering the recordation fee for the above-mentioned documents.

Very truly yours,

SEABOARD COAST LINE RAILROAD COMPANY

By 
Leonard G. Anderson, Vice
President and Treasurer

NOTE:

For the purpose of further clarifying the enclosed financing document, it is pointed out that First National Bank and Trust Company of Evanston, 800 Davis Street, Evanston, Illinois 60204, is the Trustee under a certain Trust Agreement dated as of March 15, 1978, for the benefit of the equity participant ITT Industrial Credit Company, 230 Hamm Building, St. Paul, Minnesota 55102.

RECORDATION NO. 9363 Filed & Recorded

COUNTERPART NO. 1 OF
7 COUNTERPARTS.

MAY 9 1978 -3 22 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref: 2043-818B]

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1978

between

FIRST NATIONAL BANK AND TRUST COMPANY
OF EVANSTON, not in its individual
capacity but solely as Trustee under
a Trust Agreement dated as of the date
hereof with ITT Industrial Credit Company

and

WHITEHEAD & KALES COMPANY

CONDITIONAL SALE AGREEMENT dated as of May 1, 1978, between WHITEHEAD & KALES COMPANY (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof), and FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, acting not in its individual capacity but solely as trustee under the Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with ITT Industrial Credit Company, as beneficiary (said bank, when acting in such capacity, being hereinafter called the Vendee and said beneficiary being hereinafter called the Beneficiary).

WHEREAS the Builder agrees to construct, sell and deliver to the Vendee, and the Vendee agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment); and

WHEREAS the Vendee is entering into a Lease of Equipment dated as of the date hereof with Seaboard Coast Line Railroad Company (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease); and

WHEREAS MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY (hereinafter sometimes called the Assignee or the Vendor when acting in such capacity, as more particularly set forth in Article 1 hereof) is acting as agent for certain investors pursuant to the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement), among the Vendee, the Assignee, the Lessee, the Beneficiary, and the parties named in Schedule A thereto;

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment dated

as of the date hereof between the Builder and the Assignee, as agent (such Agreement and Assignment being hereinafter called the Assignment).

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment 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 as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

In case of such assignment, the Vendee will assign to the Vendor, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (hereinafter called the Lease Assignment) and the Lessee shall consent thereto pursuant to a Consent and Agreement in the form attached to Annex D (hereinafter called the Consent).

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Vendee, and the Vendee 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 specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all regulatory requirements and specifications reasonably interpreted as being applicable to equipment of the character of such unit, and each such unit will be new equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Vendee), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until the filing or recordings referred to in Article 18 hereof (other than in the State of Florida) have been made; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder (i) subsequent to the commencement of any proceedings specified in clause (c) or (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default or (ii) unless the Builder shall have been notified by the Assignee that the conditions contained in Paragraph 7 of the Participation Agreement have been met and that funds are on deposit with the Assignee in an amount not less than 60.6% of the Purchase Price (as defined in Article 4 hereof) of the units to be delivered and the Builder shall have been notified by the Vendee that the conditions contained in Paragraph 8 of the Participation Agreement have been met or waived. The Builder agrees not to deliver any unit of Equipment hereunder following receipt of written notice from the Vendee/Assignee (a) of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) that any of the conditions contained in Paragraph 7 or 8 of the Participation Agreement have not been met or waived.

Any Equipment not delivered at the time of receipt by the Builder of the notice specified in the last sentence of the first paragraph of this Article 3, and any Equipment not delivered and accepted hereunder on or prior to December 31, 1978, by reason of failure of condition as provided in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise, shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4

hereof, from the Builder as provided in Paragraph 1 of the Participation Agreement.

The Builder's obligation as to the time of delivery set forth in Schedule B 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, delays in receiving necessary materials or delays of carriers or subcontractors.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and delivery thereof accepted on behalf of the Vendee and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

Upon tender of delivery, inspection and acceptance of each such unit at the place specified for delivery pursuant to this Article 3, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit and the Vendee shall have responsibility for, and bear the risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first para-

graph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to, or purported to be created in or transferred to, the Vendee shall be held by the Vendee solely as trustee for the benefit of the Lessee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee and, if the Purchase Price is other than the base price or prices set forth in Annex B hereto, the invoice or invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee (such invoice or invoices being hereinafter called the Invoices). If on any Closing Date (as hereinafter defined in this Article) the aggregate Purchase Price of Equipment for which settlement is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 3 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Item 3 of Annex A hereto (or such higher amount as aforesaid) and the Vendee shall take such other steps, including the execution of instruments of transfer, as it may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Equipment shall be settled for in not more than two groups delivered to and accepted by the Vendee. The term

"Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date, which units had not theretofore been settled for and which units shall have been delivered and accepted prior to ten days before such Closing Date. The term "Closing Date" with respect to any such Group shall mean such date (not earlier than April 15, 1978, and not later than December 31, 1978, such date being herein called the Cut-Off Date), occurring not more than ten days following presentation by the Builder to the Vendee of the Invoices and of the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Assignee at least five days prior to the Closing Date designated therein.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group (i) an amount equal to 36% of the aggregate Purchase Price plus (ii) the amount, if any, by which (x) ~~60.6%~~ ^{64%} of the Purchase Price of the Equipment covered by this Agreement thereupon being settled for, as set forth in the Invoice or Invoices therefor (said invoiced prices being herein called the Invoiced Purchase Prices), exceeds (y) the Maximum Conditional Sale Indebtedness specified in Item 4 of Annex A and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this clause (ii); and

(b) in 18 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment included in such Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price of the units of Equipment included in each Group payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each February 28 and August 28, commencing February 28, 1979, to and including August 28, 1987 (or if any such date is not a business day, on the next succeeding business day), each such

date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 8-7/8% per annum. Such interest shall be payable, to the extent accrued, on August 28, 1978, and each Payment Date thereafter. The installments of principal of the Conditional Sale Indebtedness in respect of each Group shall be calculated so that the amount and allocation of principal thereof and interest thereon payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal will completely amortize the Conditional Sale Indebtedness in respect of such Group. The Vendee will furnish to the Vendor and the Lessee promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the Payment Dates for the Conditional Sale Indebtedness incurred on such Closing Date and the respective amounts of principal of and interest on such Conditional Sale Indebtedness payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months, except that interest payable on August 28, 1978, shall be calculated on an actual elapsed day 365-day year basis.

The Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 9-7/8% per annum.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. All such payments may be made by the Vendee to the Vendor by wire transfer of Federal or other immediately available funds. Except as provided in Article 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor the amount required to be paid pursuant to subparagraph (a) of the third paragraph of this Article 4 with respect to the Group shall be subject to the receipt by the Vendee of the documents required to be furnished by the Builder pursuant to Section 4 of the Assignment in respect of the Group.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, it is understood and agreed by the Vendor and its successors or assigns that the liability of the Vendee, the Beneficiary or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) (not including amounts paid by the Lessee to the Vendee as reimbursement of sums paid by the Vendee on account of prior defaults under paragraph (a) of Article 15) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include (x) amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of

pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes or license fees], taxes measured by Vendor's net income, Vendor's value added taxes, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Vendor's capital, capital stock or net worth) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which such impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment for the use or operation thereof (except as provided above) or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by

reason of its security title therein (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal or administrative proceedings such impositions and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest or property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences.

The Vendee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order, repair and condition and, without limiting the foregoing, in such condition that will allow the Units to be used in interchange, reasonable wear and tear excepted.

In the event that any unit of the Equipment shall be or become worn out beyond repair, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or requisitioned for use or otherwise, except requisition for use by the United States Government for a stated period not in excess of the then remaining term of the Lease (such occurrences being herein called Casualty Occurrences), the Vendee shall promptly cause the Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness in respect of the Group of Equipment in which such unit was included (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to

this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accordance with the unpaid balance of each instalment, the Conditional Sale Indebtedness in respect of the Group of Equipment in which such unit was included and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made in respect of the Group of Equipment in which such unit was included, in such number of counterparts as the Assignee may request. In the event of the requisition for use by the United States Government of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security interest, in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness of such unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Conditional Sale Indebtedness in respect of a Group of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment included in such Group in like proportion as the original Conditional Sale Indebtedness of such unit bears to the aggregate original Conditional Sale Indebtedness of the Equipment included in such Group.

The Vendee will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all

other payments required hereby, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies; provided, however, that the Lessee shall in any event maintain such insurance in respect of the Equipment, and shall maintain public liability insurance in respect of the Equipment, in the same amounts and against the same risks insured against by the Lessee on similar equipment owned by it.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the year 1979, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment then subject to this Agreement, as to each Unit of Equipment, the descriptions and numbers of the railroad equipment to which such unit is attached and the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, at its sole cost and expense, by its agents, to inspect the Equipment and the Lessee's records from which the statement referred to in clause (a) of this Section 8 is prepared and records relating to the location of the Units at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 9. Marking of the Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Leased from First National Bank and Trust Company of Evanston, as Trustee, and Ownership Subject to a Security Interest under the Uniform

Commercial Code", 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 Vendor's security interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the numbers of any unit of the Equipment to be changed except in accordance with a statement of new numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend and with all lawful rules of the United States Department of Transportation, 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 title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be

continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor. In the event of termination of the aforesaid Lease during the term of this Agreement, the Vendee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest (other than an encumbrance created by the Vendor or resulting from claims against the Vendor not related to the ownership of the Equipment) upon or with respect to the Equipment, or any unit thereof, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the

Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee, the Beneficiary or their successors or assigns, not arising out of the transactions contemplated hereby (but including property tax liens, sales and use tax liens and any other tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's or Beneficiary's interests in the Lease and the payments to be made thereunder, but the Vendee 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee assumes the risk of and agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims (including without limitation claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return

of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period while a security interest therein remains in the Vendor or during the period of the transfer of such security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations under this Agreement (except as provided in Articles 7 and 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will receive good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe

of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period while a security interest therein remains in the Vendor or during the period of the transfer of such security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by the Builder, or out of any breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations under this Agreement (except as provided in Articles 7 and 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of the Equipment under this Agreement, the Vendee will receive good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

Except in cases of articles or materials specified by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendee and, as third party beneficiary hereof, the Lessee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Lessee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe

on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Builder 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 Builder because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee 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, assign, set over and deliver to the Lessee every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Lessee and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Lessee or the Vendee or the users of the Equipment all and every such further assurance as may be reasonably requested by the Lessee or the Vendee to more fully effectuate the assignment and delivery of every such claim, right and cause of action. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

The Builder represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The agreement of the parties relating to the Builder's warranty of material and workmanship is set forth in Item 2 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement without the prior written consent of the Vendor, except as provided in Article VII or VIII of the Trust Agreement.

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 Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time; provided, however, that no such assignment shall be made to any person other than the Assignee or a recognized financial institution having net worth, a capital and surplus, as the case may be, of at least \$25,000,000 without the prior written consent of the Vendee. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its respective obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, the assignor shall give written notice to the Vendee and the Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such

acquisition, that the rights of the Assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the manufacture, construction, delivery or warranty of the Equipment (which obligations shall be construed to include, without limitation, the indemnification provisions of the fourth paragraph of Article 13 hereof) nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten days after the date such payment became due and payable; or

(b) the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the Participation Agreement, the Assignment, the Lease, or the Lease Assignment, all dated as of the date hereof, on its part to be kept and 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 Lessee and, unless such petition shall

have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Vendee, the Beneficiary or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or the Beneficiary under the Trust Agreement or of the Lessee under the Lease and the Consent under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of such obligations), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Vendee, the Beneficiary or the Lessee, as the case may be, thereunder shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee, the Beneficiary or the Lessee, as the case may be, or for their respective 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 Vendee shall make or permit 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 and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) an Event of Default shall have occurred under the Lease; provided, however, that an Event of Default under the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by the Vendee's remedying such default prior to the expiration of five business days after the date of the occurrence of such Event of Default under the Lease and provided, further, that a default in the payment of rental under the Lease will not be deemed for the purpose of this clause to be an Event of Default hereunder if the Vendee shall not be in default under the provisions of clause (a) of this Article 15.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the Lease immediately upon such notice to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Vendee 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 16. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on the lines of the Lessee as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor, (b) the Equipment to be

moved to such interchange point or points of the Lessee as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor and (c) if the Vendor shall so request, the Equipment to be detached from each unit of railroad rolling stock to which it has been attached. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Lessee until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purchase the Lessee has agreed in the Lease to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee and, at the Lessee's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users; provided, however, that the Lessee and the Lessor have agreed in the Lease that if such storage of units of Equipment shall exceed a term of 365 days after delivery of the last unit of Equipment, the storage thereafter shall be at the expense and risk of the Lessor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Lessee requiring specific performance hereof. The Lessee 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.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and no objection is sent thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as

compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; provided, further, that if the Vendee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or

and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places 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, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Vendee and the Lessee shall be given written notice of any proposed sale or the making of a contract for such sale not less than 10 days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee and the Vendee to purchase or provide a purchaser, within 15 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor 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. Any extension of time for payment hereunder or other indulgence duly granted to the Vendee or the Lessee shall not otherwise alter or affect the Vendor's rights or the Vendee's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default 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 Vendee shall, subject to the provisions of the last paragraph of Article 4 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. 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 Vendee.

The Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement, subject to the provisions of the last paragraph of Article 4 hereof. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law or of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act. The Vendee will further cause all necessary filings and recordings, and, when required, refilings and rerecordings of this Agreement, any assignments hereof, and the Lease Assignment and any amendments or supplements hereto or thereto and/or appropriate financing statements or continuation statements to be made, and from time to time when required refiled and rerecorded, in accordance with the applicable provisions of the Uniform Commercial Code of the States of Illinois, Virginia and Florida (and, if the Vendee changes its chief place of business to a different state, in any such other state) and in any other State of the United States of America or the District of Columbia where filing is reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Vendee will from time to time do and perform

any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor.

The Vendee will promptly furnish to the Vendor certificates or other evidence satisfactory to the Vendor of such filing, registering, depositing and recording.

ARTICLE 19. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other agreements, oral or 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 representatives of the Vendor and the Vendee.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at the following addresses

(a) to the Vendee, at 800 Davis Street, Evanston, Illinois 60204, Attention of Corporate Trust Department,

(b) to the Lessee, at 3600 West Broad Street, Richmond, Virginia 23230, Attention of Leonard G. Anderson, Vice President and Treasurer,

(c) to the Builder, at the address specified in Item 1 of Annex A hereto,

(d) to the Beneficiary, at 230 Hamm Building, St. Paul, Minnesota 55102, Attention of Steven Rickmeier, Vice President,

(e) to any assignee of the Vendor, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement. Any such notice shall be deemed to be effective three days after its deposit.

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Beneficiary, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the third paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's execution and delivery of the Lease. The Lessee shall be liable for such obligations under said Articles regardless of whether or not the Lease provides for the discharge of such obligations or is in effect. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by First National Bank and Trust Company of Evanston, or for the purpose or with the intention of binding the said bank or the Beneficiary personally but are made and intended for the purpose of binding only the Trust Estate as such term is used

in the Trust Agreement, and this Agreement is executed and delivered by the said bank solely in the exercise of the powers expressly conferred upon the said bank as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said bank or the Beneficiary on account of any representation, undertaking or agreement of said bank acting in its capacity as Vendee or of the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The Vendee warrants that its chief place of business is located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state, except for the indemnities and warranties set forth in Article 13 hereof and Item 3 of Annex A hereto, which shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart marked Original Counterpart delivered to the Assignee pursuant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

WHITEHEAD & KALES COMPANY,

by

C. E. Wieser

Vice President-Finance
C. E. WIESER

[Corporate Seal]

Attest:

G. Konchal

Treasurer

G. KONCHAL
TREASURER

FIRST NATIONAL BANK AND TRUST
COMPANY OF EVANSTON,
not in its individual capacity but
solely as Trustee as aforesaid,

by

Vice President
and Trust Officer

[Seal]

Attest:

Assistant Vice President
and Trust Officer

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

On this 5th day of May 1978, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is the Vice President-Finance of WHITEHEAD & KALES 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.

Ardis W. Hall
Notary Public

My Commission expires ARDIS W. HALL
Notary Public, Wayne County, Mich.
My Commission Expires July 22, 1981

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

On this day of 1978, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President and Trust Officer of FIRST NATIONAL BANK AND TRUST COMPANY OF EVANSTON, that one of the seals affixed to the foregoing instrument is the seal of said national bank, that said instrument was signed and sealed on behalf of said national bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national bank.

Notary Public

My Commission expires

SCHEDULE I

Allocation Schedule of Each
\$1,000,000 of Conditional
Sale Indebtedness Payable
in 18 Installments

<u>Date</u>	<u>Payment No.</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Recovery</u>	<u>Ending Principal</u>
8/28/78	Interim	*	*	-0-	1,000,000.00
2/28/79	1	81,827.83	44,375.00	37,452.83	962,547.17
8/28/79	2	81,827.83	42,713.03	39,114.80	923,432.37
2/28/80	3	81,827.83	40,977.31	40,850.52	882,581.85
8/28/80	4	81,827.83	39,164.57	42,663.26	839,918.59
2/28/81	5	81,827.83	37,271.39	44,556.44	795,362.15
8/28/81	6	81,827.83	35,294.20	46,533.63	748,828.52
2/28/82	7	81,827.83	33,229.27	48,598.56	700,229.96
8/28/82	8	81,827.83	31,072.70	50,755.13	649,474.83
2/28/83	9	81,827.83	28,820.45	53,007.38	596,467.45
8/28/83	10	81,827.83	26,468.24	55,359.59	541,107.86
2/28/84	11	81,827.83	24,011.66	57,816.17	483,291.69
8/28/84	12	81,827.83	21,446.07	60,381.76	422,909.93
2/28/85	13	81,827.83	18,766.63	63,061.20	359,848.73
8/28/85	14	81,827.83	15,968.29	65,859.54	293,989.19
2/28/86	15	81,827.83	13,045.77	68,782.06	225,207.13
8/28/86	16	81,827.83	9,993.57	71,834.26	153,372.87
2/28/87	17	81,827.83	6,805.92	75,021.91	78,350.96
8/28/87	18	<u>81,827.78</u>	<u>3,476.82</u>	<u>78,350.96</u>	.00
	Totals	1,472,900.89	472,900.89	1,000,000.00	

* Interest only on the Conditional Sale Indebtedness shall be payable to the extent accrued on August 28, 1978.

ANNEX A
to
Conditional Sale Agreement

- Item 1: Whitehead & Kales Company, a Michigan corporation, having an address at 58 Haltiner Street, River Rouge, Michigan 48218.
- Item 2: The Builder warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material and workmanship under normal use and service, the Builder's obligation under this Item 2 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Vendee, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. The Builder shall not be liable for any indirect or consequential damages of whatever nature.

THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3, 4 AND 13 OF THE AGREEMENT, AND THE BUILDER NEITHER ASSUMES NOR AUTHORIZES ANY PERSON TO ASSUME FOR IT ANY OTHER LIABILITY IN CONNECTION WITH THE CONSTRUCTION AND DELIVERY OF ITS EQUIPMENT, EXCEPT AS AFORESAID.

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

Item 3: The Maximum Purchase Price referred to in Article 4 of the Agreement is \$675,000.

Item 4: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Agreement is attached is \$432,000.

ANNEX B
to
Conditional Sale Agreement

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>SCL I.D. Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Auto Racks, Fully Enclosed Bi-Level	AB 15156-GN Drawing R-244-700 12/5/77	River Rouge, Michigan	25	\$27,000	\$675,000	B-534 through B-558	Beginning July 24, 1978 at River Rouge, Michigan

Interstate Commerce Commission

Washington, D.C. 20423

5/9/78

OFFICE OF THE SECRETARY

**Leonard G. Anderson
President & Treasurer
SeaBoard Coast Line Railroad Company
P.O.Box 27581
Richmond, Virginia 23261**

Dear
Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on **5/9/78** at **3:30pm**, and assigned recordation number(s) **9368 & 9368-A**

Sincerely yours,


**H.G. Homme, Jr.
Acting Secretary**

Enclosure(s)

SE-30-T
(6/77)