

RECORDATION NO. 10230-1425  
MAR 28 1979 - 15 PM

OKLAHOMA GAS & ELECTRIC COMPANY, 321 North Harvey Post Office Box 321 Oklahoma City, Oklahoma 73101 Telephone 405-272-3000



MAR 27 12 04 PM '79  
OFFICE OF SECRETARY

*3/27/79  
786-7575*

RECORDATION NO. 10230-1425  
Filed 1425

MAR 28 1979 - 15 PM

INTERSTATE COMMERCE COMMISSION

March 21, 1979

9-083A150  
Date 3-27-79  
Fee \$ 120.00  
CC Washington, D.C.

RECORDATION NO. 10230-1425  
Filed 1425

MAR 28 1979 - 15 PM  
INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission  
12th Street and Constitution Avenue,  
Washington, DC 20423

Attention: Secretary

Gentlemen:

Enclosed herewith for filing and recording, pursuant to Section 20c of the Interstate Commerce Act, are eight executed counterparts of the following:

1. Conditional Sale Agreement dated as of February 1, 1979, between Thrall Car Manufacturing Company and Mercantile-Safe Deposit and Trust Company;
2. Agreement and Assignment dated as of February 1, 1979, between Thrall Car Manufacturing Company and Fidelity Bank National Association, as Agent;
3. Lease of Railroad Equipment dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and Oklahoma Gas and Electric Company; and
4. Assignment of Lease and Agreement dated as of February 1, 1979, between Mercantile-Safe Deposit and Trust Company and Fidelity Bank National Association, as Agent.

The foregoing documents relate to the purchase and financing of:

450 100-ton (4,000 cu. ft.) high-side steel gondola cars with swivel couplers (Car Nos. OGEX 581 through 1022 and OGEX 5009 through 5016, both inclusive).

Enclosed is our check in the amount of \$120 in payment of the applicable recording fees.

*Butler*  
*Butler*

*7*

Interstate Commerce Commission  
Page Two  
March 21, 1979

Please deliver five counterparts, each bearing recordation data with respect to the filing pursuant to the provisions of Section 20c of the Interstate Commerce Act, to the bearer of this letter.

For your records, the names and addresses of the parties to the several instruments are as follows:

Fidelity Bank National Association  
P. O. Box 24128  
Oklahoma City, OK 73124  
Attention: Mr. Walt Pralle

Mercantile-Safe Deposit and Trust Company  
Two Hopkins Plaza  
Baltimore, MD 21201  
Attention: Corporate Trust Department

Thrall Car Manufacturing Company  
P. O. Box 218  
Chicago Heights, IL 60401  
Attention: Mr. John P. Lynch  
Vice President - Sales

Oklahoma Gas and Electric Company  
321 North Harvey Avenue  
Oklahoma City, OK 73101  
Attention: Mr. R. Drake Keith  
Senior Vice President-Finance

Very truly yours,



R. Drake Keith  
Senior Vice President-Finance

Enclosures

3/28/79

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

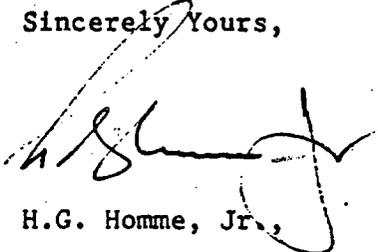
OFFICE OF THE SECRETARY

R. Drake Keith  
Senior Vice President Finance  
Oklahoma Electric Company  
Post Office Box 321  
Oklahoma City, Oklahoma 73101

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 3/28/79 at 2:15PM and assigned recordation number(s) 10230, 10230A, 10230B, & 10230C

Sincerely Yours,



H.G. Homme, Jr.,  
Secretary

Enclosure(s)

SE-30-T  
(2/78)

RECORDATION NO. 10230 Filed 1425

MAR 28 1979 - 15 PM

INTERSTATE COMMERCE COMMISSION

10230

082 1

CONDITIONAL SALE AGREEMENT

Dated as of February 1, 1979

between

THRALL CAR MANUFACTURING COMPANY,

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY

as Trustee

RECEIVED  
MAR 27 12 03 PM '79  
OFFICE OF SECRETARY

SECRETARY  
MAR 27 12 03 PM '79  
RECEIVED

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of February 1, 1979 between THRALL CAR MANUFACTURING COMPANY (hereinafter called the Vendor or Builder as more particularly set forth in Article 1) and MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Trustee (hereinafter, together with its successors and assigns, called the Vendee) under an Amended and Restated Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with THE FIRST OKLAHOMA INVESTMENTS CORPORATION and BANKERS TRUST COMPANY (hereinafter called collectively the Beneficiaries and individually a Beneficiary).

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

WHEREAS, the Vendee is entering into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease), substantially in the form of Annex C hereto, with OKLAHOMA GAS AND ELECTRIC COMPANY (hereinafter called the Lessee);

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 (subject to the limitations set forth in the third paragraph of Article 3 and the first paragraph of Article 4) that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined in Article 4) for the Equipment as is required under subparagraph (a) of the fourth paragraph of Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by FIDELITY BANK NATIONAL ASSOCIATION, as Agent (hereinafter, together with its successors and assigns, called the Assignee) under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) with the Beneficiaries, the Builder, the Lessee and the Investors named therein, as assignee of the Builder's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated as of the date hereof (hereinafter called the Assignment) between the Builder and the Assignee.

The term "Vendor," whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder 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 and excluded from any such assignment; and the term "Builder," whenever used in this Agreement, means, both before and after any such assignment, the Builder. 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, certain rights, titles and interests of the Vendee in and to the Lease pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Annex D hereto.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex A 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 A hereto and in accordance with such modifications thereof as may be agreed upon in writing among 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 United States Department of Transportation and Interstate Commerce Commission requirements and standards for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit; and each such unit and its component parts will be new railroad equipment when delivered to the Vendee as hereinafter provided and will not contain any used components.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place specified in Annex A hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex A hereto; provided, however, that delivery of any unit of the Equipment shall not be made except concurrently with the settlement therefor on a Closing Date pursuant to Article 4, and in no event until this Agreement and the Lease shall have been filed with the Interstate Commerce Commission pursuant to 49 U.S.C. §11303.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including, but not limited to, acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for on or before June 30, 1979 shall be excluded from this Agreement and not included in the term "Equipment," and the Vendee shall be relieved of its obligation to pay the cost thereof. In the event of any such exclusion, the parties

hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

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 all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of a Group (as defined in Article 4) of units of the Equipment, such units shall be presented on the Closing Date therefor (as hereinafter defined in Article 4) to an inspector of the Vendee or its duly appointed agent for inspection at the place specified for delivery of such 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 on such Closing Date, but subject to the satisfaction of the conditions to such Closing Date set forth in the Assignment, execute and deliver to the Vendee, with a copy to the Builder, a certificate of acceptance (hereinafter called a Certificate of Acceptance) stating that such units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 10; provided, however, that the Builder shall not thereby be relieved of its warranties referred to in Article 14. By Section 2 of the Lease, the Vendee is appointing the Lessee its agent to inspect and accept delivery of each unit of the Equipment on the Closing Date therefor. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) shall be deemed to be acceptance of such unit by the Vendee.

On delivery and acceptance of each such unit hereunder on a Closing Date at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any 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 14.

ARTICLE 4. Purchase Price and Payment. The base price per unit of the Equipment is set forth in Annex A hereto. Such base price is subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee prior to the presentation by the Builder of its invoice in the manner described in the next paragraph. The term "Purchase Price" shall mean with respect to any unit of the Equipment the base price as so increased or decreased. The term "Purchase Price" shall mean with respect to any number of units of the Equipment the sum of the Purchase Prices of such units of the Equipment, and with respect to the Equipment, shall mean the sum of the Purchase Prices of all of the units of the Equipment. The Purchase Price of each Unit

shall include the sales or use tax, storage charges prior to delivery and freight charges to place of delivery, in each case, if any. If on any Closing Date (as hereinafter defined in this Article 4) the aggregate invoiced Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed \$17,664,496, 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 be required, after giving effect to such exclusion, to reduce such aggregate Purchase Price of all units delivered and accepted under this Agreement to not more than \$17,664,496, and the Vendee will have no further obligations with respect to units of Equipment so excluded.

The Equipment shall be settled for in not more than four groups of units of the Equipment (each group, other than the last group, consisting of not less than 50 units) to be delivered to and accepted by the Vendee (each such group being hereinafter called a Group). The term "Closing Date" with respect to each Group shall mean such date, not earlier than March 15, 1979 and not later than June 30, 1979, occurring not more than five Business Days following presentation by the Builder to the Vendee of the invoice for such Group and the Certificates of Acceptance in respect thereof 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 Agent at least three Business Days prior to the Closing Date designated therein.

The term "Business Days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, Baltimore, Maryland or Oklahoma City, Oklahoma are authorized or obligated by law to remain closed.

Subject to the provisions of the final paragraph of this Article 4, the Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay 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, an amount equal to 37% of the Purchase Price of such Group; and

(b) In 30 consecutive semi-annual installments, as hereinafter provided, an amount equal to 63% of the Purchase Price of such Group.

The portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (hereinafter called the Conditional Sale Indebtedness)

shall be payable on January 1 and July 1 of each year, commencing January 1, 1980 to and including July 1, 1994 (or if any such date is not a Business Day, on the next following Business Day, but with interest accruing only to such January 1 or July 1), each such date being hereinafter called a Payment Date. The installment of principal 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 Annex B hereto. 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 9-3/4% per annum and such interest shall be payable, to the extent accrued, on January 1 and July 1 of each year, commencing July 1, 1979 and terminating July 1, 1994. The Vendee will furnish to the Vendor promptly after the Cut-Off Date (as defined in Paragraph 4 of the Finance Agreement) a schedule in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of Conditional Sale Indebtedness and interest payable on each Payment Date and the amount of interest payable on July 1, 1979.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months, except that for purposes of determining the amount of interest payable on July 1, 1979, reference shall be made to the actual number of days elapsed on a calendar year basis.

Subject to the provisions of the final paragraph of this Article 4, the Vendee will pay interest, to the extent legally enforceable, at a rate equal to the higher of (i) 10-3/4% per annum, or (ii) 3% per annum in excess of the per annum rate charged by Fidelity Bank National Association from time to time to its largest and most credit-worthy commercial borrowers on 90-day commercial loans, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Agreement shall be made by wire transfer of immediately available funds. Except as provided in this Article 4, in Article 7 and in Article 8, the Vendee shall not have the privilege of pre-paying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The obligation of the Vendee to pay to the Vendor any amount required to be paid pursuant to the fourth paragraph of this Article 4 with respect to any Group is specifically subject to the fulfillment, on or before the Closing Date in respect of such Group, of the following conditions (any of which may be waived by the Vendee, and payment by the Vendee of the amount specified in subparagraph (a) of such fourth paragraph with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or irrevocably waived):

(a) the Assignee shall have paid or caused to have been paid to the Builder the amounts contemplated to be paid by it as provided in Article 1 and in the Assignment and the documents required by the Assignment shall have been delivered;

(b) no event of default specified herein or Event of Default under the Lease, nor any event which, with notice, demand and/or lapse of time provided for herein or in the Lease, would constitute such an event of default or Event of Default shall have occurred and be continuing; and

(c) the Vendee shall have received (i) the opinion of counsel required by Section 16 of the Lease, (ii) the documents and opinions required by Section 5 of the Assignment, and (iii) such other documents and opinions as the Vendee may reasonably request.

The Vendee may, at its option, but only with the written consent of the Lessee, on any January 1 or July 1 occurring on or after July 1, 1979, prepay all, but not less than all, of the Conditional Sale Indebtedness then outstanding (such date on which prepayment is to be made being hereinafter called the Prepayment Date), at a price (hereinafter called the Prepayment Price) equal to the percentage of the principal amount being prepaid set forth in the following schedule opposite such Prepayment Date:

<u>Prepayment Date</u>	<u>Percentage</u>	<u>Prepayment Date</u>	<u>Percentage</u>
July 1, 1979	109.75%	July 1, 1987	103.25%
January 1, 1980	109.75	January 1, 1988	103.25
July 1, 1980	108.94	July 1, 1988	102.44
January 1, 1981	108.94	January 1, 1989	102.44
July 1, 1981	108.13	July 1, 1989	101.63
January 1, 1982	108.13	January 1, 1990	101.63
July 1, 1982	107.31	July 1, 1990	100.81
January 1, 1983	107.31	January 1, 1991	100.81
July 1, 1983	106.50	July 1, 1991	100.00
January 1, 1984	106.50	January 1, 1992	100.00
July 1, 1984	105.69	July 1, 1992	100.00
January 1, 1985	105.69	January 1, 1993	100.00
July 1, 1985	104.88	July 1, 1993	100.00
January 1, 1986	104.88	January 1, 1994	100.00
July 1, 1986	104.06	July 1, 1994	100.00
January 1, 1987	104.06		

together, in the case of any such prepayment, with accrued interest to the Prepayment Date. Notice of such optional prepayment shall be irrevocable and shall be given in a written instrument filed with the Vendor within 60 days but no less than 30 days prior to the Prepayment Date. Notice of prepayment having been given as aforesaid, the Conditional

Sale Indebtedness to be so prepaid shall, on the Prepayment Date, become due and payable at the Prepayment Price and from and after such Prepayment Date (unless the Vendee shall default in the payment of the Prepayment Price and accrued interest), the Conditional Sale Indebtedness shall cease to bear interest. Notwithstanding the above, however, the Vendee may not prepay any Conditional Sale Indebtedness pursuant to this paragraph prior to July 1, 1989 directly or indirectly from, or in anticipation of the receipt of, the proceeds (or any part thereof) of any refinancing operation which has a lower effective dividend or interest cost to the Vendee (or the Beneficiaries), computed in accordance with generally accepted financial practice, than that of the Conditional Sale Indebtedness. Each notice of prepayment given pursuant to this paragraph with respect to a Prepayment Date prior to July 1, 1989 shall state that such prepayment is not being effected in contravention of the provisions of this Article.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17), it is understood and agreed by the Vendor that the liability of the Vendee or any Beneficiary for all obligations and payments to be made by the Vendee under and pursuant to this Agreement, shall not exceed an amount equal to, and shall be payable only out of the "income and proceeds from the Equipment" as hereinafter defined, 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. Except as provided in the next preceding sentence, the Vendor agrees that neither the Vendee nor any Beneficiary shall have any personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received and finally collected by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that neither the Vendee nor any Beneficiary (i) makes any representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document referred to therein or relative thereto) in so far as it relates to the Lessee or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease (or any document referred to therein), it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Lessee and the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein, the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 16 shall have occurred and while it shall be continuing, so

much of the following amounts as are free and clear of all claims and liens by or through the Lessee received by the Vendee or the Assignee at any time after any such event of default and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7) or of a Termination Occurrence (as hereinafter defined in Article 8) paid for or with respect to the Equipment pursuant to the Lease, (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee 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 up to an amount equal to that portion of the Conditional Sale Indebtedness then remaining unpaid, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under Section 11 of the Lease; and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) as are free and clear of all claims and liens by or through the Lessee received by the Vendee or the Assignee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination Occurrence) and/or interest and premium thereon due and payable on the date such amounts received by the Vendee or the Assignee were required to be paid over 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 amounts referred to in the foregoing clauses (a), (b) and (c) which were received by the Vendee or the Assignee prior to the declaration of such an event of default and which exceeded the amounts required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences or a Termination Occurrence) and/or interest and premium thereon due and payable on the date on which amounts with respect thereto received by the Vendee or the Assignee were required to be paid over pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease, or payments by the Lessee to the Vendee (in its individual capacity) or any Beneficiary pursuant to Sections 6 and 9 of the Lease and payments required to be made under the Indemnity Agreement between the Lessee and the Beneficiaries dated as of the date hereof. It is further understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor upon an event of default hereunder to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest and premium thereon and for all other payments and obligations hereunder. Notwithstanding anything contained in Article 16 or Article 17, the Vendor or any successor or assign of the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess

of the amounts payable by the Vendee on account of the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable within the limitations set forth in this paragraph.

ARTICLE 5. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all additions to the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Equipment, title to which vests in the Lessor under the Lease, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 7 and Article 8, when and only when the Vendor shall have been paid the full Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall 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, 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 or which result from claims against the Vendor not related to its security interest in the Equipment, the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein or any other transaction pursuant to or contemplated by this Agreement or any instrument referred to herein and deliver such bill or bills of sale to the Vendee at its address referred to in Article 21, (b) execute and deliver to the same place, for filing, recording, registering 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 or Article 8 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, forfeiture 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 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 net income taxes, gross receipts taxes (except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes), franchise taxes measured by net income based upon receipt of such payments, excess profits taxes and similar taxes or general corporation, franchise or like taxes measured by Vendor's capital, capital stock or net worth], 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 collectively Impositions), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof (except as excluded above) or upon the earnings arising therefrom or upon the Vendor solely by reason of its security title therein (except as excluded 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 title 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 Imposition so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Imposition 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 Imposition so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor, which counsel is satisfactory to the Vendee) or unless the Vendee shall have approved in writing the payment thereof.

ARTICLE 7. Maintenance; Casualty Occurrences; Insurance. The Vendee, at its own cost and expense, shall maintain and keep each unit of the Equipment in good order and repair, ordinary wear and tear excepted.

In the event that any unit of the Equipment shall become lost, stolen, destroyed, irreparably damaged from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only, in the case of an indefinite period, after such taking or requisition continues for one year, or by any other governmental entity resulting in the loss of possession by the Lessee for a period of one year (such occurrences being hereinafter called Casualty Occurrences), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date for the payment of an installment of principal and interest on the Conditional Sale Indebtedness following such notice (hereinafter called a Casualty Payment Date), the Vendee shall pay a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit as of the Casualty Payment Date and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit or units. Any money paid to the Vendor pursuant to this paragraph or received as the proceeds of insurance maintained in accordance with this Article 7 shall be applied to prepay, without penalty or premium, ratably in accordance with the unpaid balance thereof, each installment of the Conditional Sale Indebtedness with respect to such units, and the Vendee will promptly furnish to the Vendor, each Beneficiary and the Lessee a revised schedule of payments of installments of Conditional Sale Indebtedness and interest thereafter to be made, in such number of counterparts as the Assignee may request, calculated as provided in the fifth paragraph of Article 4. To the extent that any money paid to the Vendor pursuant to this paragraph or received as proceeds of insurance maintained in accordance with this Article 7 exceeds the unpaid balance of the Conditional Sale Indebtedness with respect to any unit of the Equipment suffering a Casualty Occurrence, plus any interest owing with respect thereto, such excess will be paid over to the Vendee by the Vendor.

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; provided, however, that the Vendor, if so requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee, a bill of sale for such unit releasing the Vendor's security interest therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment, the performance of the

Vendor's duties and responsibilities under this Agreement or any instrument referred to herein or any other transaction pursuant to or contemplated by this Agreement or any instrument referred to herein.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence for purposes of this Article 7 shall be deemed to be that portion of the original Purchase Price of such unit of the Equipment remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 shall be deemed to be a payment on each unit of the Equipment then subject to this Conditional Sale Agreement in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of all the Equipment then subject to this Conditional Sale Agreement.

Any property insurance proceeds or condemnation payments received by the Vendor in respect of units suffering a Casualty Occurrence shall be deducted from the amounts payable by the Vendee to the Vendor pursuant to the second paragraph of this Article 7. All property insurance proceeds or condemnation payments received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon receipt by the Vendor of a certificate signed by an authorized officer of the Lessee to the effect that any damage to the unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 8. Termination Occurrence. In the event that the Lease shall be terminated as to all the units of the Equipment by and in accordance with Section 8 of the Lease (any such event being hereinafter called a Termination Occurrence), the Vendee shall pay to the Vendor, on or prior to the Termination Date (as defined in the Lease), a sum equal to the Casualty Value of the units of the Equipment as of such Termination Date, without premium, and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay in full the unpaid balance of each installment of the Conditional Sale Indebtedness, together with interest accrued and unpaid thereon to the date of prepayment.

Upon payment by the Vendee to the Vendor of the sums in this Article 8 provided, absolute right to the possession of, title to and property in all units of the Equipment shall vest in the Vendee, without further transfer or action on the part of the Vendor; provided, however, that the Vendor, if so requested by the Vendee, will execute and

deliver to the Vendee, at the expense of the Vendee, a bill of sale for all such units releasing the Vendor's security interest therein free of all liens, security interests and other encumbrances created or retained hereby or which result from claims against the Vendor not related to the ownership of the Equipment, the performance of the Vendor's duties and responsibilities under this Agreement or any instrument referred to herein or any other transaction pursuant to or contemplated by this Agreement or any instrument referred to herein.

ARTICLE 9. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, 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 being leased under the Lease and covered by this Agreement, the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence or are undergoing repairs, other than running repairs during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 have been preserved or replaced. The Vendor or its duly appointed agent shall have the right to inspect the Equipment and the Lessee's records (to the extent permitted by the Lease) with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 10. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Annex A hereto, 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 "Owned by a Bank or Trust Company. Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission", with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's 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 shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced, obliterated or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded, registered

and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded, registered 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 name or initials or other insignia customarily used by the Lessee.

ARTICLE 11. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every user of the Equipment to comply, in all respects with all laws (including, without limitation, laws with respect to the use, maintenance and operation of the Equipment) of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads 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 addition of or to any part of 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 12. 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 Vendee may only lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall at all times be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Lessee shall not be in default under the Lease or under this Agreement, the Lessee shall be entitled to the possession and use of the Equipment; and provided further, that no unit of Equipment may be delivered to, or accepted or used by, the Lessee under the Lease prior to the settlement for such unit on the Closing Date therefor, as provided

in Article 4 hereof. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under the Lease until the Vendor shall have received notice in writing of the Vendee's intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by the Vendee upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended, modified, or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

ARTICLE 13. 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, security interest or other encumbrance on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises; provided, however, that 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 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 adversely affect its rights under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges, security interests or other encumbrances upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 14. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees 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 when the Vendor holds a security interest in the

Equipment or arising out of the transfer of the security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, 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, or the termination of this Agreement in any manner whatsoever.

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 have 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.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder warrants to the Vendee and the Lessee that the Equipment will be built in accordance with the Specifications, requirements and standards set forth in Article 2 and warrants that the Equipment will be free from defects in material or design and workmanship under normal use and service, the Builder's obligation under this paragraph being limited to repairing or replacing at its plant any part or parts of any unit of the Equipment which shall be returned, within one year after the delivery of such unit to the Vendee, to the Builder with transportation charges prepaid, and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF THE BUILDER IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES OF THE BUILDER EXCEPT UNDER ARTICLES 2, 3, 4 AND 14, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except as aforesaid and except as provided in the immediately succeeding paragraph. It is further understood and agreed that in no event shall the Builder be liable for indirect or consequential damages of any kind. The Builder further agrees with the Vendee and the Lessee that neither the inspection as provided in Article 3 nor any examination or acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Vendee and the Lessee of any of their rights under this Article 14.

The Builder agrees to indemnify, protect and hold harmless the Lessee and the Vendee 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 Lessee, the Vendee or their assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. In case any of the Equipment is determined to infringe on any patent or other similar right in respect of which liability may be charged against the Builder and the use of any of the Equipment is enjoined, the Builder shall, at its own expense, at its option, either procure for the Vendee and the Lessee the right to continue using such Equipment or replace the same with non-infringing equipment or modify the same so it becomes non-infringing. 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 Vendee and 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 Vendee or 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; and the Builder further agrees to execute and deliver to the Vendee or the Lessee all and every such further assurance as may be reasonably requested by the Vendee or the Lessee more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give prompt notice to the Vendee, the Assignee and the Lessee of any claim known to the Builder from which liability may be charged against the Vendee or the Lessee hereunder, and each of the Vendee and the Lessee will give prompt notice to the Builder, the Assignee and to each other of any claim known to any of them from which liability may be charged against the Builder or one of them hereunder. 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.

ARTICLE 15. Assignments. The Vendee will not (a) except as provided in Article 12, 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 unless such sale, assignment, transfer or disposition is made (i) expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee

and the Lessee) and (ii) to a bank or trust company organized under the laws of the United States or any State thereof, having a capital and surplus aggregating at least \$25,000,000, and such bank or trust company expressly assumes, in writing, in form and substance satisfactory to the Vendor, all of the obligations of the Vendee hereunder. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the Vendor, assignee or transferee assuming any of the obligations of the Vendee hereunder.

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 prior to an event of default hereunder no such assignment shall be made to any person other than a recognized financial institution having a net worth, or capital and surplus, as the case may be, of at least \$25,000,000. 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 contained or referred to in Article 14, or relieve the Vendee of its obligations to the Builder under Articles 2, 3, 4, 6 and 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any assignment or reassignment referred to in the immediately preceding paragraph, either the assignor or the assignee shall give written notice to the Vendee, 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 it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. 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 in the event of such assignment by the Vendor, as hereinbefore provided, the

rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, or such part thereof as may be assigned, together with interest and premium, if any, thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder in respect of the Equipment, or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee or the Lessee by the Builder. Any and all such obligations, indebtedness or liability, howsoever arising, shall be and remain enforceable by the Vendee or the Lessee, as the case may be, against and only against the Builder.

In the event of any such assignment by the Vendor or successive assignments, the Vendee will, upon request by the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of all the Equipment at the time covered by this Agreement shall be borne by the Vendee, and in the event of an assignment of less than all such Equipment shall be borne by such assignee.

ARTICLE 16. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Vendee shall fail to pay in full when due any installment of the Conditional Sale Indebtedness (irrespective of any provision of this Agreement limiting the liability of the Vendee), and such default shall continue for 10 days;

(b) the Vendee shall fail to pay in full any sum, other than installments of the Conditional Sale Indebtedness, payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee), and such default shall continue for 10 days after written notice from the Vendor to the Vendee and the Beneficiaries specifying such failure of payment and demanding that the same be paid;

(c) the Vendee shall, for more than 20 days after the Vendor shall have demanded performance thereof by written notice to the Lessee, the Vendee and the Beneficiaries, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating

to the financing or lease of the Equipment, on the part of the Vendee to be kept or performed or to make provision satisfactory to the Vendor for such compliance, and neither the Vendee nor the Beneficiaries shall have made such provision; or

(d) an Event of Default shall have occurred under the Lease, as defined in Section 11 thereof, and the Vendee shall have not cured the Event of Default as permitted by Section 22 of the Lease;

(e) any proceedings shall be commenced by or against the Vendee, in its capacity as trustee under the Trust Agreement, for any relief under any bankruptcy or insolvency law, or any law relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition or extension, and, if such proceedings have been commenced against the Vendee, such proceedings shall not 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 of the obligations of the Vendee under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for its respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration incurred by such trustee or trustees or receiver or receivers, within 60 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever is earlier, or the Vendee shall make a general assignment for the benefit of creditors or shall admit in writing its inability to pay its debts generally as they become due; or

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

then at any time after the occurrence of such 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) subject to the rights of the Lessee set forth in Article 12, cause the Lease immediately (upon such notice) to terminate (and the Vendee acknowledges the right of the Vendor to terminate the Lease); provided, however, that in no case shall there be a default under this Agreement where the Agent has received all monies which are due, but has failed to transmit the same; and provided further that such termination shall not be in derogation of or impair the

rights of the Vendee (or any assignee of the Vendee's rights in the Lease) to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under Section 11 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Vendee to sue for and recover damages provided for in Section 11 of the Lease upon the occurrence of an Event of Default under the Lease, 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 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor, subject to the last paragraph of Article 4 and Article 22, 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 wherever situated. The Vendee shall promptly notify the Vendor if it has actual knowledge of any event which constitutes, constituted, or with notice, demand and/or lapse of time could constitute, an event of default under this Agreement and the action taken or proposed to be taken with respect thereto.

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 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to Article 12, and compliance with any mandatory requirements of law 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 17 expressly provided, and may remove the same from the

possession and use of the Vendee or any other person having such possession and use and for such purpose may enter upon the premises of the Lessee (to the extent permitted by the Lease) or 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.

In case the Vendor shall rightfully demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall (subject to the rights of the Lessee set forth in Article 12), at the Lessee's expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment, at the expense of the Lessee, on any lines of railroad or premises approved by the Vendor until the Vendor shall have leased, sold or otherwise disposed of the same. The agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance hereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the 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 21, and to any other persons to whom the law may require notice, within 30 days after such election. In the event that the Vendor should elect to retain the Equipment, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee 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 next proviso, 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; and provided further, that if the Vendee, any Beneficiary, 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 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession of the Equipment, at its election and upon reasonable notice to the Vendee, any Beneficiary, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 12, sell the Equipment, or one or more units thereof, free from any and all claims of the Vendee, the Lessee or any other person 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 the expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, such sale and the Vendor's reasonable attorney's fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of any 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 to the amount due the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Oklahoma City, Oklahoma or at such other place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee, the Lessee and all other persons to whom the law requires notice shall be given written notice of such sale not less than 30 days prior thereto, by telegram or registered mail, addressed as provided in Article

21. If such sale is to be a private sale, it shall be subject to the rights of the Vendee, any Beneficiary and the Lessee to purchase or provide a purchaser, within 10 days prior to the proposed sale date, at the same price offered by the intending purchaser or a better price. 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. In the event that the Vendor shall be the purchaser thereof, 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 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all 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 pay the amount of such deficiency to the Vendor upon demand; and if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall 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. 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 17 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 18. Severability and Applicable Laws. Any provision of this Agreement prohibited or unenforceable by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. 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, to the end 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 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 19. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with 49 U.S.C. §11303; and 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 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; and the Vendee or the Lessee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Annexes hereto, and the Finance Agreement exclusively and completely states the rights of the Vendor and the Vendee hereunder with respect to the Equipment and supersedes all other agreements, oral or written, with respect thereto. 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 21. Notices. Any notice hereunder to any of the persons designated below shall be deemed to have been properly served if delivered personally or if mailed, when mailed registered mail postage prepaid, at the following specified addresses:

(a) To the Builder, Thrall Car Manufacturing Company, Post Office Box 218, Chicago Heights, Illinois 60401, attention of Vice President-Finance, with a copy to Carroll, Hartigan & Hillery, Ltd., One North LaSalle Street, Chicago, Illinois 60602, attention of John M. Hartigan;

(b) To the Assignee, Fidelity Bank National Association, as Agent, P.O. Box 24128, Oklahoma City, Oklahoma 73124, attention of Walter F. Pralle, Senior Vice President and Trust Officer;

(c) To the Vendee, by mail, Mercantile-Safe Deposit and Trust Company, as Trustee, P.O. Box 2258, Baltimore, Maryland, attention of Corporate Trust Department; by all other means, Mercantile-Safe Deposit and Trust Company, as Trustee, 2 Hopkins Plaza, Baltimore, Maryland 21201, attention of Corporate Trust Department;

(d) To the Lessee, Oklahoma Gas and Electric Company, 321 North Harvey Avenue, Oklahoma City, Oklahoma 73101, attention of Treasurer;

(e) To the Beneficiaries, at their addresses set forth in Paragraph 15 of the Finance Agreement;

(f) To any other assignee of the Vendor or of the Vendee, at such address as may have been furnished in writing to the other parties hereto by such assignee;

or to such other address as may have been furnished in writing by such person to the other parties to this Agreement and shall be deemed to have been given for all purposes under this Agreement on the date of such delivery or mailing.

ARTICLE 22. Immunities of Certain Individuals; 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, past, present or future, of the Builder, the Vendor, the Vendee or any 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 being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second, seventh and eighth paragraphs of Article 17 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 9, 10, 11, 13, 14, 15, and 19 shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. 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 pursuant to Article 16, provided that the failure of the Lessee to perform such obligations shall not constitute an event of default hereunder unless and until the Lessee is declared to be in default under the Lease. 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 that, anything herein to the contrary notwithstanding: (i) 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 the Vendee, or for the purpose or with the intention of binding the Vendee personally, but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement); (ii) this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as Trustee under the Trust Agreement; and (iii) no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee or any of the Beneficiaries on account of any representation, undertaking or agreement of the Vendee, 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 may look to the Trust Estate for satisfaction of the same.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights

conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording, registering or depositing, if any, of this Agreement or 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, registered or deposited.

ARTICLE 24. Execution. This Agreement may be executed in any number of Counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of February 1, 1979 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Agreement to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

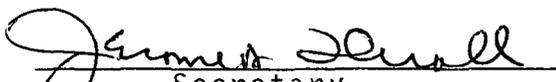
THRALL CAR MANUFACTURING COMPANY

By

  
\_\_\_\_\_  
Vice President

(Corporate Seal)

Attest:

  
\_\_\_\_\_  
Secretary

MERCANTILE-SAFE DEPOSIT AND  
TRUST COMPANY, as Trustee

By

  
\_\_\_\_\_  
Assistant Vice President

(Corporate Seal)

Attest:

  
\_\_\_\_\_  
Corporate Trust Officer

STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

On this 16<sup>th</sup> day of March, 1979, before me personally appeared Stanley D. Christanson to me personally known who, being by me duly sworn, said that he is a Vice President of Thrall Car Manufacturing Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Kathryn M. Nelson  
Notary Public

(Notarial Seal)

My commission expires

11/22/82

STATE OF MARYLAND )  
 ) SS  
CITY OF BALTIMORE )

On this 23<sup>rd</sup> day of March, 1979, before me personally appeared E. E. Schreiber, to me personally known, who, being by me duly sworn, said that he is an Assistant Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Patricia A. Shilow  
Notary Public

(Notarial Seal)

My commission expires

7-1-82

<u>Type</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Car Numbers (Both Inclusive)</u>	<u>Unit Base Price</u>	<u>Maximum Purchase Price</u>	<u>Estimated Time and Place of Delivery</u>
100-ton (4,000 cu.ft.) high-side steel gondola cars with swivel couplers on one or both ends	CN-100-46-200	Chicago Heights, Illinois	450	OGEX 581 - 1022 and 5009 - 5016	\$35,000	\$17,664,496	April 3, 1979 through June 30, 1979 near St. Louis, Missouri

Annex A to  
Conditional Sale Agreement

Annex B to  
Conditional Sale Agreement

Allocation Schedule of Each \$1,000,000  
of Conditional Sale Indebtedness

<u>DATE</u>	<u>BEGINNING PRINCIPAL</u>	<u>DEBT SERVICE</u>	<u>INTEREST (at 9-3/4% per annum)</u>	<u>PRINCIPAL</u>	<u>REMAINING BALANCE</u>
January 1, 1980	\$1,000,000.00	\$64,127.47	\$48,750.00	\$15,377.47	\$984,622.53
July 1, 1980	984,622.53	64,127.47	48,000.35	16,127.12	968,495.41
January 1, 1981	968,495.41	64,127.47	47,214.15	16,913.32	951,582.09
July 1, 1981	951,582.09	64,127.47	46,389.63	17,737.84	933,844.25
January 1, 1982	933,844.25	64,127.47	45,524.90	18,602.57	915,241.68
July 1, 1982	915,241.68	64,127.47	44,618.03	19,509.44	895,732.24
January 1, 1983	895,732.24	64,127.47	43,666.95	20,460.52	875,271.72
July 1, 1983	875,271.72	64,127.47	42,669.50	21,457.97	853,813.75
January 1, 1984	853,813.75	64,127.47	41,623.42	22,504.05	831,309.70
July 1, 1984	831,309.70	64,127.47	40,526.35	23,601.12	807,708.58
January 1, 1985	807,708.58	64,127.47	39,375.79	24,751.68	782,956.90
July 1, 1985	782,956.90	64,127.47	38,169.15	25,958.32	756,998.58
January 1, 1986	756,998.58	64,127.47	36,903.68	27,223.79	729,774.79
July 1, 1986	729,774.79	64,127.47	35,576.52	28,550.95	701,223.84
January 1, 1987	701,223.84	64,127.47	34,184.66	29,942.81	671,281.03
July 1, 1987	671,281.03	64,127.47	32,724.95	31,402.52	639,878.51
January 1, 1988	639,878.51	64,127.47	31,194.08	32,933.39	606,945.12
July 1, 1988	606,945.12	64,127.47	29,588.57	34,538.90	572,406.22
January 1, 1989	572,406.22	64,127.47	27,904.80	36,222.67	536,183.55
July 1, 1989	536,183.55	64,127.47	26,138.95	37,988.52	498,195.03
January 1, 1990	498,195.03	64,127.47	24,287.01	39,840.46	458,354.57
July 1, 1990	458,354.57	64,127.47	22,344.79	41,782.68	416,571.89
January 1, 1991	416,571.89	64,127.47	20,307.88	43,819.59	372,752.30
July 1, 1991	372,752.30	64,127.47	18,171.67	45,955.80	326,796.50
January 1, 1992	326,796.50	64,127.47	15,931.33	48,196.14	278,600.36
July 1, 1992	278,600.36	64,127.47	13,581.77	50,545.70	228,054.66
January 1, 1993	228,054.66	64,127.47	11,117.66	53,009.81	175,044.85
July 1, 1993	175,044.85	64,127.47	8,533.44	55,594.03	119,450.82
January 1, 1994	119,450.82	64,127.47	5,823.23	58,304.24	61,146.58
July 1, 1994	61,146.58	64,127.47	2,980.89	61,146.58	- 0 -

Annex A  
Lease of Railroad Equipment

<u>Type</u>	<u>Quantity</u>	<u>Car Numbers</u>	<u>Place of Delivery</u>
100-ton (4,000 cu. ft.) high-side steel gondola cars with swivel couplers on one or both ends	450	OGEX 581 - 1022 and 5009 - 5016	Near St. Louis, Missouri

Delivery Schedule

<u>Number of Units</u>	<u>Closing Date</u>
120	April 3, 1979
110	May 1, 1979
110	May 15, 1979
110	May 30, 1979

OKLAHOMA GAS AND ELECTRIC COMPANY

By *R. W. Smith*  
Vice President

(Corporate Seal)

Attest:

*Patricia Kelley*  
Secretary

STATE OF MARYLAND )  
 ) SS  
CITY OF BALTIMORE )

On this 23<sup>rd</sup> day of March, 1979, before me personally appeared E. E. Schreiber, to me personally known, who, being by me duly sworn, said that he is an Assistant Vice President of Mercantile-Safe Deposit and Trust Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Patricia R. Shilow  
Notary Public

(Notarial Seal)

My commission expires

7-1-82

STATE OF OKLAHOMA )  
 ) SS  
COUNTY OF OKLAHOMA )

On this 20<sup>th</sup> day of March, 1979, before me personally appeared R. D. Keith, to me personally known, who, being by me duly sworn, said that he is a Vice President of Oklahoma Gas and Electric Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and 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.

Ruth Ann Chappin  
Notary Public

(Notarial Seal)

My commission expires

September 23, 1980