Southern Railway System

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Washington, D.C. 20013

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9-135A010

May 15, 1979
60631

Date MAY 15 1979 RECORDATION NO. 9369 Filed 1425
Fee $ 50.00
MAY 15 1979 - 9 55 AM
ICC Washington, D.C. INTERSTATE COMMERCE COMMISSION

Mr. H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECEIVED
MAY 15 9 45 AM '79
FEE OPERATION
ICC BR.

Dear Mr. Homme:

I enclose four counterparts of each of the instruments described in paragraph (1) hereof for recordation pursuant to Section 11303 of Title 49, U.S. Code (formerly Section 20c of the Interstate Commerce Act) and return, together with two original counterparts thereof which are for the Commission's files.

In accordance with 49 CFR Part 1116 covering the recordation of documents, I wish to advise as follows:

(1) The enclosed instruments, submitted concurrently for recordation as one document, are a Conditional Sale Agreement covering the purchase of certain railroad equipment, more fully described below, between Portec, Incorporated, 1800 Century Boulevard, Suite 680, Atlanta, Georgia, 30345, Vendor, and Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013, Purchaser, to which is attached an Agreement and Assignment between the Vendor and United States Trust Company of New York, 130 John Street, New York, New York 10038, Assignee, both instruments being dated as of May 1, 1979.

(2) The equipment covered by these documents is described as follows:

100 - 70-ton 89'4" Totally Enclosed Tri-Level Automobile Rack Cars bearing Purchaser's road numbers 159371 - 159470, inclusive, AAR designation FA.

Checked - 8835

Each unit of the equipment will be marked in letters not less than one-half inch in height as follows:

"OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION."

(3) After recordation, the original documents should be returned to Manfred S. Block, Attorney, Southern Railway Company, P.O. Box 1808, Washington, D.C. 20013.

(4) The recordation fee of $50 is enclosed.

Please acknowledge receipt on the enclosed copy of this letter.

Sincerely,

James L. Tapley

James L. Tapley

Enclosures

Interstate Commerce Commission

Washington, D.C. 20423

5/15/79

OFFICE OF THE SECRETARY

James L. Tapley
Vice President-Law
Southern RYW. System
P.O.Box 1808
Washington, D.C. 20013

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 5/15/79 at 9:55am, and assigned recordation number(s). 10369

Sincerely yours,

H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

0369
RECORDATION NO. Filed 1425

MAY 15 1979 - 9 55 AM

INTERSTATE COMMERCE COMMISSION

[CS&M 2164-084]

CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1979

Between

PORTEC, INC.

and

SOUTHERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of May 1, 1979

Between

PORTEC, INC.

AND

UNITED STATES TRUST COMPANY OF NEW YORK,
As Agent

(Covering 100 Portec Totally Enclosed Tri-Level
Automobile Rack Cars)

CONDITIONAL SALE AGREEMENT

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SCHEDULE A--Miscellaneous

SCHEDULE B--Description of Equipment

CONDITIONAL SALE AGREEMENT, dated as of May 1, 1979, between PORTEC, INC. (the "Builder" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and SOUTHERN RAILWAY COMPANY, a Virginia corporation (the "Railroad").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the standard gauge railroad rolling-stock equipment (including automobile rack superstructures) described in Schedule B attached hereto (the "Equipment"), first put into service not earlier than May 1, 1979, subject to the terms and conditions set forth herein.

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

ARTICLE 1. Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the Builder and any successor for the time being to its manufacturing properties and businesses, 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, Portec, Inc., and any successor for the time being to its manufacturing properties and businesses.

ARTICLE 2. Sale and Purchase. Subject to the terms and conditions set forth in this Agreement, the Builder shall construct the units of Equipment at its plant set forth in Schedule B hereto and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall have been constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may have been or may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Speci-

fications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of sale of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be new standard gauge railroad rolling-stock equipment or an automobile rack superstructure first put into service not earlier than May 1, 1979.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder at any time after any event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing.

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 pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. Except to the extent otherwise provided in the purchase order or orders covering the Equipment, if the Builder's failure to deliver Equipment

so excluded from this Agreement results from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, such payment to be in cash within 30 days following the later of, the delivery of or the presentation of the invoice for such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad 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 each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad 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, on or prior to the Closing Date hereunder in respect of each such unit of Equipment acquired by the Railroad such inspector or an authorized representative or an officer of the Railroad shall execute and deliver to the Builder a certificate of acceptance (a "Certificate of Acceptance") stating, on behalf of the Railroad, that such unit or units have been inspected and accepted by the Railroad under this Agreement and are marked in accordance with Article 7 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility 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 such unit; provided, however, that the Builder of such unit shall not thereby be relieved of its warranty referred to in Article 14 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject

to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein for any unit of the Equipment shall mean the base price or prices as so increased or decreased.

For the purpose of making settlement, the Equipment of the Builder shall be divided into such number of groups of units of the Equipment, but not more than 4, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as the Builder and the Railroad may agree to.

The Railroad 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 each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the aggregate Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore or is then being made, as stated in the invoice or invoices presented (said invoiced prices being hereinafter called the "Invoiced Purchase Prices"), exceeds (y) the sum of $8,140,000 and any amount or amounts previously paid or payable by the Railroad with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 15 equal consecutive annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices of all Groups less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter called the CSA Indebtedness).

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraph (a) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The installments of the CSA Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable annually on June 1 in each year

commencing June 1, 1980, to and including June 1, 1994 (or if any such date is not a business day on the next succeeding business day without interest or penalty), each such date being hereinafter called a "Payment Date". The unpaid portion of the CSA Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9.85% per annum. Such interest shall be payable, to the extent accrued, semiannually on June 1 and December 1, in each year commencing December 1, 1979.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after June 1, 1979, and prior to November 1, 1979 [the "Cut-Off Date"]), not more than 15 business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least two 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, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10.85% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made 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. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) 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, 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 Impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof 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 title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad 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 proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad 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 Railroad 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 Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. Except as provided in Article 8 hereof, the Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession

and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, 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 Railroad at its address referred to in Article 21 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 Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad 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 Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad 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 set forth in any amendment or supplement 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-half inch in height, the words "OWNED BY A BANK OR TRUST COMPANY UNDER A FINANCING AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION" or other appropriate markings approved 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 title to and property in such Equipment and its rights under this Agreement. The Railroad will not place any such unit 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 Railroad will not change the identifying number of any unit of such Equipment 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 by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation (other than the Vendor) 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 Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Replacement Equipment; Prepayment of CSA Indebtedness.

A. Casualty Occurrences. In the event that any unit of the Equipment (including any automobile rack superstructures constituting a part of any unit of the Equipment) shall be worn out, lost, stolen, destroyed, irreparably damaged, or damaged beyond economic repair in the opinion of the Railroad, or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise other than by way of requisition for use by any government or instrumentality or agency thereof not exceeding 180 days, or if compliance with any law or regulation of any Federal, state or local governmental authority or legislative, executive or judicial body having authority or jurisdiction or with the interchange or other rules of the Association of American Railroads would require the change or replacement or addition of any equipment or appliance to any unit or units of the Equipment and such

compliance would in the opinion of the Railroad be uneconomical (such occurrences being hereinafter called "Casualty Occurrences"), and in the event that the total Casualty Value (as hereinafter defined) of units that shall have suffered a Casualty Occurrence shall exceed $50,000 (exclusive of units having suffered a Casualty Occurrence with respect to which a written notice shall have been given to the Vendor pursuant to this Article 8), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto by written notice. When the aggregate Casualty Value of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this paragraph A of Article 8) hereunder shall exceed $350,000 (or such lesser amount as the Railroad may elect), the Railroad, after it has knowledge of such event, shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

B. Economic Obsolescence of Automobile Rack Superstructures. In the event that the Railroad shall determine that the employment by the Railroad of automobile rack superstructures at any time constituting a part of any of the units of Equipment shall be inconsistent with the best economic utilization of the units of Equipment by the Railroad (any such event being hereinafter called an "Event of Economic Obsolescence"), the Railroad may file with the Vendor a certificate of an officer of the Railroad to such effect, specifying the particulars of such Event of Economic Obsolescence, and stating the identifying numbers of the units of Equipment affected thereby and the Replacement Value (as hereinafter defined) of the automobile rack superstructures constituting a part of such units of the Equipment. Upon the filing of any such certificate with respect to an Event of Economic Obsolescence, the Railroad shall promptly pay to the Vendor a sum equal to the aggregate Replacement Value of the automobile rack superstructures constituting a part of such units of the Equipment which shall have been the subject of such Event of Economic Obsolescence.

C. Replacement and/or Prepayment. Subject to the provisions of the third paragraph of this paragraph C of Article 8, any money paid to the Vendor pursuant to this

Article 8 shall, as an officer of the Railroad may direct in a written instrument filed with the Vendor, be applied (so long as, to the actual knowledge of the Vendor, no event of default shall have occurred and be continuing), in whole or in part, to prepay installments of CSA Indebtedness or toward the cost of one or more automobile rack superstructures to be attached to a unit of Equipment subject hereto or toward the cost of one or more other units of standard gauge railroad rolling-stock equipment (other than work or passenger equipment), in each case first put into service no earlier than May 1, 1979, to replace units suffering a Casualty Occurrence or an Event of Economic Obsolescence; provided, however, that no moneys paid to the Vendor pursuant to paragraph B of this Article 8 with respect to an Event of Economic Obsolescence may be applied, in whole or in part, to prepay installments of CSA Indebtedness. The Agent shall pay for any such replacement unit the lesser of the cost or fair value thereof, as evidenced by the certificate described in the next paragraph. If the cost or fair value (whichever is the lesser) of any such replacement equipment shall be in excess of such funds held by the Vendor hereunder, then such excess shall be a credit toward the Railroad's obligation to make future payments pursuant to this Article 8; provided, however, that such credit shall be allowed only to the extent such credit relates to a single unit of replacement equipment in respect of which the funds on deposit are not sufficient to pay the entire cost thereof. The fair value of any unit of Equipment theretofore owned and used by the Railroad or any affiliate of the Railroad shall be deemed to be the lesser of the actual fair value thereof or the cost thereof to the Railroad or such affiliate less depreciation accrued thereon computed by the straight-line method at the rate of 6-2/3% of said cost for each full year (but not pro rata for any part of a year) from the date on which the unit was first acquired by the Railroad or such affiliate to the date as of which such unit shall become replacement equipment hereunder. Such unit or units of replacement equipment shall have a remaining useful life at least as long as the Equipment described in Schedule B hereto would have had on the date of such replacement but for the Casualty Occurrence or Event of Economic Obsolescence, as the case may be. In case any money is applied to prepay indebtedness, it shall be so applied on the next installment date for the payment of CSA Indebtedness occurring at least three business days following receipt by the Vendor of such written direction to reduce installments thereafter falling due pro rata.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is an automobile rack superstructure or unit of standard-gauge railroad equipment (other than work or passenger equipment) first put into service not earlier than May 1, 1979, and has been marked as required by the provisions of this Article 8 and certifying the cost of such replacement unit and the fair value thereof; and in the case of replacement of any automobile rack superstructures constituting a part of the Equipment, certifying that such replacement will be installed on a unit of the Equipment subject hereto and identifying such unit by number; and

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Vendor free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the interests of the Vendor therein.

So long as, to the actual knowledge of the Vendor, no event of default (as described in Article 16 hereof), or event which with the lapse of time or demand, or both, could constitute such an event of default, shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open-market commercial paper rated within the two highest grades by Standard and Poor's Corporation or by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least $50,000,000, in each case maturing not more than one year from the date of such investment (such investments being hereinafter called "Investments"), as may be specified in such written direction.

Any such Investments shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If, to the actual knowledge of the Vendor, one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

D. Definitions of Casualty Value and Replacement Value. Subject to the following paragraph, the Casualty Value or Replacement Value, as the case may be, of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to paragraph C of this Article 8) as of the date such Replacement Value and/or Casualty Value, as the case may be, is determined bears to the original CSA Indebtedness. The Casualty Value or Replacement Value, as the case may be, of each replacement unit shall be deemed to be that amount which bears the same ratio to the lesser of cost or fair value thereof (determined as provided in paragraph C of this Article 8) as the unpaid CSA Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to paragraph C of this Article 8) as of the date such Casualty Value or Replacement Value, as the case may be, is determined bears to the unpaid CSA Indebtedness (without giving

effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Casualty Value or Replacement Value, as the case may be, of any automobile rack superstructure constituting an original part of any unit of the Equipment shall be deemed to be an amount which bears the same ratio to the Casualty Value or Replacement Value, as the case may be, of the applicable unit of the Equipment as the cost of such automobile rack superstructure (determined as provided in Schedule B hereto) bears to the original Purchase Price of such unit. The Casualty Value or Replacement Value, as the case may be, of any automobile rack superstructure constituting an accession to any original or replacement unit of the Equipment shall be determined as provided in the next preceding paragraph as if such automobile rack superstructure constituted a separate unit of replacement equipment.

E. Title to Replacement Units. The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all replacements of Equipment or parts thereof (including automobile rack superstructures) shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units or parts thereof not manufactured by it. Title to all such replacement units and parts shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units and parts shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

In order to facilitate the sale or other disposition of any Equipment or part thereof suffering a Casualty Occurrence or which shall have been the subject of an Event of Economic Obsolescence in respect of which the Railroad shall have paid to the Vendor the Casualty Value or the Replacement

Value, the Vendor shall, upon request of the Railroad, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment or part thereof, and such other documents as may be required to release such Equipment or part thereof from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the CSA Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto and public liability insurance with respect to third party personal injury and property damage, in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it. The Railroad may self insure the Equipment to the same extent it self insures other equipment of a similar nature and provided such insurance is consistent with prudent industry practice.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. Except as provided in Article 8 hereof, the Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

Except as provided in Article 8 hereof, during the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, 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 any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. So long as any of the CSA Indebtedness shall be outstanding hereunder,

on or before August 31 in each year, commencing with the calendar year which begins January 1, 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (A) setting forth as at the preceding June 30 the amount, description and identifying numbers of all units of the Equipment (i) that have suffered a Casualty Occurrence or Event of Economic Obsolescence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement), (ii) that are undergoing repairs or have been withdrawn from service for repairs (other than, in each case, running repairs), and (iii) 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 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the normal use thereof for equipment of like characteristics, including, without limitation, the use thereof upon the lines or routes owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines or routes owned or operated by any carrier controlled by, or under common control with, the Railroad, or over which it or any affiliate has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement. In addition, the Railroad may transfer its rights hereunder with respect to the Equipment or any unit thereof to one or more wholly owned subsidiaries and may lease the Equipment to one or more affiliates or, under a written lease for a term not exceeding one year (including all renewal or extension options reserved to the lessee or lessor), to a responsible company, as determined by the Railroad, in any such case without being released from its obligations under this Agreement and subject to all the rights and remedies of the Vendor hereunder. The Railroad may receive and retain

compensation for such uses and leases from other carriers or companies so using or leasing any unit or units of the Equipment. The Railroad will not permit any unit of the Equipment to be put in service involving the regular operation and maintenance thereof outside the United States of America, except in the usual interchange of traffic.

The Railroad will not install or affix any automobile racks superstructure at the time constituting Equipment subject hereto to any railroad rolling-stock other than a unit of the Equipment subject hereto, without the prior written consent of the Vendor.

ARTICLE 12. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment until reimbursed therefor by the Railroad or otherwise 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.

ARTICLE 13. Railroad's Indemnities. The Railroad 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, arising out of retention by the Vendor of title to and a security interest in the Equipment hereunder, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor

or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Builder's Warranty of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured or caused to be manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed or caused or purported to be caused to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Railroad 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 Railroad, its 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 Railroad likewise will indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured or caused to be manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed or caused or purported to be caused to be developed 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 Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator or the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder as a part of or 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

either infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 2 of Schedule A hereto.

ARTICLE 15. Assignments. Except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits, and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of its obligations to deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder or the Vendor under Articles 2, 3, 4, 5, 13 and 14 hereof and this Article 15 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all 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 Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement 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 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 its Equipment or the specifications, delivery or warranty thereof, or with respect to any indemnity herein contained, 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 Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary and upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event

of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with any settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee by the Railroad in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required from the Railroad by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of Equipment as provided in the instrument making such assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect on the date such payment was due.

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 Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement and such default shall continue for 5 business days after notice thereof by the Vendor to the Railroad; or

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

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may be hereafter amended, shall be filed by or against the Railroad 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (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 60 days after such petition shall have been filed; or

(d) any other proceeding shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or a receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment which shall continue for 10 business days after notice thereof by the Vendor to the Railroad;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad

and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration 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. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice or lapse of time, or both, could 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 by notice to the Railroad 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 had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to 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 Railroad 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 possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises

where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor rightfully shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor 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 on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any reasonable point or points selected by the Vendor. 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 Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking pursuant to this Agreement 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 entire indebtedness in respect of the Purchase Price of the Equipment 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 Railroad by telegram or registered mail, addressed as provided in Article 21 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 should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the

Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, 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 indebtedness in respect of the Purchase Price of the Equipment, 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 and maintaining the Equipment and the Vendor's reasonable attorneys' 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 Railroad; provided, further, that if the Railroad 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 have given no 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 thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, 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, maintaining, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' 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 Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, maintaining, holding, preparing for sale and selling 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 such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 in New York City, New York, Washington, D.C., and Richmond, Virginia, or a sale where fewer than 40 corporate offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad 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 of the Equipment, it shall not be accountable to the Railroad (except to the extent of any 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 or any part of the sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any

payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad'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 Railroad'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 Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including 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 legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction 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 Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agree-

ment shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, 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 unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, and 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, etc. The Railroad will, at its own expense, cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, refile, register, deposit, record and rerecord any and all further instruments (including financing statements in respect of the automobile rack superstructures constituting part of any unit of the Equipment) 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 interests in and to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

This Agreement creates a security interest for the benefit of the Vendor in the Equipment the possession and use of which has been or will be transferred to the Railroad, which interest secures payment and performance by the Railroad of its obligations under this Agreement.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent or any successor agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, and all fees and expenses of Messrs. Cravath, Swaine & Moore, as special counsel for the first assignee of this Agreement and for any

party initially acquiring interests in such first assignment, and all reasonable legal expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, if mailed, by first class mail, postage prepaid, at Post Office Box 1808, Washington, D. C. 20013, Attention of Treasurer, and, if delivered, at Southern Railway Building, 15th and K Streets, N.W., Washington, D. C., Attention of Treasurer,

(b) to the Builder at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto 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.

ARTICLE 22. 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 Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and, except to the extent expressly provided in the third paragraph of Article 3 hereof, 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 officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; 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 or deposit hereof, if any, and of any assignment hereof, or any financing statement in respect thereof, 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, or in which any unit of the Equipment shall be located, including any federal law in respect of the same, and any rights arising out of the marking of the units of Equipment as provided in Article 7 hereof. The Railroad represents and warrants that its chief place of business (as such term is used in Section 28:9-103 of the Uniform Commercial Code--Secured Transactions of the District of Columbia) is in Washington, D. C.

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 contract, which shall be sufficiently evidenced by any such original counterpart. It shall not be necessary that any counterpart be signed by all the parties. Although this Agreement is dated as of the date first set forth above, 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 instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

SOUTHERN RAILWAY COMPANY,

by K. A. Hoecker (MSB)
Senior Vice President

[Corporate Seal]

Attest:

Assistant Secretary

PORTEC, INC.,

by _____
Vice President

[Corporate Seal]

Attest:

_____
~~Assistant~~ Secretary

DISTRICT OF COLUMBIA) ss.:

On this 14th day of May 1979, before me personally appeared K. A. Stoecker, to me personally known, who, being by me duly sworn, says that he is a Senior Vice President of SOUTHERN RAILWAY COMPANY, that the corporate seal of said corporation is affixed to the foregoing instrument, 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.

C. O. Wagner

Notary Public

C. O. WAGNER
Notary Public
In and For the District of Columbia
My Commission Expires May 31, 1982

[NOTARIAL SEAL]

My Commission Expires

STATE OF ILLINOIS,)
) ss:
COUNTY OF DU PAGE,)

On this 11th day of May 1979, before me personally appeared D. F. Marrico, to me personally known, who, being by me duly sworn, says that he is a Vice President of PORTEC, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley N. Bielanski

Notary Public

[NOTARIAL SEAL]

My Commission Expires March 6, 1982

SCHEDULE A

Item 1: Portec Inc.
1800 Century Boulevard, Suite 680
Atlanta, Georgia 30345.

Item 2: Portec, Inc. ("Portec"), warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (this "Agreement") and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein which were specified or supplied by the Railroad and not manufactured by Portec) and workmanship under normal use and service, Portec's obligation under this Item 2 being limited to making good at its factory any part or parts of any unit of the Equipment which shall be returned to Portec with transportation charges prepaid, within two years after the delivery of such unit to the Railroad, and which Portec's examination shall disclose to its satisfaction to have been thus defective. THE FOREGOING WARRANTY OF PORTEC IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT FOR ITS OTHER OBLIGATIONS OR LIABILITIES UNDER ARTICLES 2, 3, 4 AND 14 OF THIS AGREEMENT, and Portec 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. It is further understood and agreed that in no event shall Portec be liable for indirect or consequential damages of any kind.

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

SCHEDULE B

Type	Builder's Specifications	Builder's Plant	Quantity	Approximate cost per unit	Railroad Road Numbers (Inclusive)	Estimated Time and Place of Delivery
89' 4" 70-ton Mid-deck Flat Cars with EOC and Totally Enclosed Tri-Level Automobile Racks Attached	NCP-206 and ETMP No. 123 and F-70-770613 (AAR Mechanical Deisgnation: FA) as amended by agreed changes	Novi, Michigan	100	$74,376*	SOU 159371-159470	May-June, 1979 at Novi, Michigan

* For purposes of determining the Casualty Value or Replacement Value pursuant to Paragraph D of Article 8 hereof, the cost of each automobile rack superstructure constituting a part of each unit shall be deemed to be 50% of the actual Purchase Price of such unit.

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of May 1, 1979, between PORTEC, INC. (the "Builder"), and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Agent under a Finance Agreement dated as of the date hereof (the "Finance Agreement") (said Agent so acting being hereinafter called the "Assignee").

WHEREAS the Builder and Southern Railway Company (the "Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof (the "CSA") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder, and the purchase by the Railroad of the standard gauge railroad rolling-stock equipment described in Schedule B to the CSA and first put into service not earlier than May 1, 1979 (the "Equipment");

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT WITNESSETH: That, in consideration of the sum of One Dollar ($1) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereby agree as follows:

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

(a) all its right, title and interest in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of such Builder in and to the CSA (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA on account of its indebtedness in respect of the Purchase

Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by it. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to

such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the CSA until any necessary filings and recordations referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from the Railroad or special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to

be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Article 14 of the CSA, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the CSA or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Builder's Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least two business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee security title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the CSA, and convenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units

by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the CSA;

(c) an invoice of the Builder for the units of Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) title to the units of the Equipment in such Group is validly vested in the Assignee and title to such units, at the time of delivery thereof to the Railroad under the CSA, was free from all claims, liens, security interests and other encumbrances (other than those created by the CSA), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement by the Railroad or for the valid execution and delivery of the CSA or this Assignment by the parties thereto, (vii) the CSA and this Assignment have been filed with the Interstate Commerce Commission in accordance with 49 U.S.C. § 11303, financing statements have been duly filed and recorded in the District of Columbia in accordance with the applicable provisions of the Uniform Commercial Code of the District of Columbia and no other filing or recordation (except as therein specified) is necessary for the protection of the rights of the Assignee in any State of the United States or in

the District of Columbia, and (viii) registration of the CSA, this Assignment or any certificates of interest delivered pursuant to any such Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; such opinion shall also state that said counsel have examined the opinions being delivered on such Closing Date pursuant to subparagraphs (e) and (f) of this Section 4, that such opinions are satisfactory in form and scope to said counsel and that said counsel believe that the Assignee and Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or any such Investors.

(e) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement, the CSA and this Assignment by all parties thereto other than the Railroad) and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the CSA has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal, valid and binding obligation of the Builder;

(g) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to this first paragraph of this Section 4) required

to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad;

(h) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that, no event of default, or event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and is then continuing.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the CSA, on the opinion of counsel for the Builder; and, in giving the opinion specified in said subparagraph (d), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States (including, but not limited to the due filing of the financing statements in the District of Columbia) on the opinion of counsel for the Railroad or the opinion of counsel for the Builder as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if an event of default, or any event which with the lapse of time or demand, or both, as provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the CSA. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to

the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

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

SECTION 6. The Builder hereby:

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

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that

the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, the Builder and the Assignee, each pursuant to due authority, have caused this instrument to be executed 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.

PORTEC, INC.,

by D F Morris

Vice President

[CORPORATE SEAL]

Attest:

J Clifton

~~Assistant~~ Secretary

UNITED STATES TRUST COMPANY
OF NEW YORK, as Agent,

by _____
Vice President

[CORPORATE SEAL]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF DU PAGE,)

On this 11th day of May 1979, before me personally appeared W. F. Morris, to me personally known, who, being by me duly sworn, says that he is a Vice President of PORTEC, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Shirley N. Bielanski
Notary Public

[NOTARIAL SEAL]

My Comission Expires March 6, 1982

STATE OF NEW YORK,)
) ss.:
COUNTY OF NEW YORK,)

On this 10th day of May 1979, before me personally appeared Irene R. Scocca, to me personally known, who, being by me duly sworn, says that he is a Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of ~~Directors~~ Trustee and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Christine C. Collins
Notary Public

[NOTARIAL SEAL]

My Commission Expires

CHRISTINE C. COLLINS
Notary Public, State of New York
No. 31-4624735
Qualified in New York County
Certificate filed in New York County
Commission Expires March 30, 1980

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

SOUTHERN RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of May 1, 1979.

SOUTHERN RAILWAY COMPANY,

by R. A. Hoecker (MSB)

Senior Vice President