
CONDITIONAL SALE AGREEMENT

Dated as of June 15, 1970

between

PACIFIC CAR AND FOUNDRY COMPANY

and

THE TEXAS AND PACIFIC RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1970

between

PACIFIC CAR AND FOUNDRY COMPANY

and

FIRST NATIONAL BANK IN ST. LOUIS

100 70-Ton Insulated Box Cars

\$1,800,000 Maximum Committed Amount

CONDITIONAL SALE AGREEMENT dated as of June 15, 1970, by and between the corporation named in Item 1 of Schedule A hereto (hereinafter called the Manufacturer or Builder, as more particularly set forth in Article 28 hereof), and THE TEXAS AND PACIFIC RAILWAY COMPANY, a corporation organized and existing under and by virtue of Acts of Congress of the United States of America (hereinafter called the Railroad).

WHEREAS the Builder has agreed to construct or cause to be constructed and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached hereto (hereinafter called the Equipment);

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

ARTICLE 1. *Construction and sale.* The Builder will construct the Equipment and will sell and deliver it to the Railroad and the Railroad will purchase from the Builder and accept delivery of and pay for the Equipment as hereinafter provided, each unit of which shall be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Builder (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment shall conform to all Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Builder will deliver the various units of the Equipment to the Railroad at such point or points within the United States of America as shall be specified by the Railroad, freight charges, if any, prepaid (unless the Railroad shall otherwise specify or direct), in accordance with the delivery schedule set forth in Schedule B hereto.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from acts of God, acts of Government, such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, or delays in receiving necessary materials, and, without limitation to the foregoing, other causes whether similar or dissimilar to the foregoing beyond the Builder's reasonable control.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered and accepted on or before June 15, 1971, shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion the Railroad and the Builder shall execute (a) an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered and accepted hereunder and (b) a separate agreement providing for the purchase of such excluded Equipment by the Railroad, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Railroad and the Builder shall determine.

The Equipment during construction shall be subject to inspection by inspectors or other authorized representatives of the Railroad. The Railroad will upon notification by the Builder of the delivery schedule of the units ar-

range to have an agent or inspector at the plant of the Builder who will inspect the units promptly and will be authorized to accept delivery on behalf of the Railroad. Upon delivery of each unit, the Railroad agrees to cause to be executed and delivered to the Builder, a certificate of acceptance (hereinafter called the Certificate of Acceptance) executed by an agent or representative of the Railroad stating that such unit has been inspected and is accepted by him on behalf of the Railroad, has been completed in accordance with the Specifications and is marked in accordance with Article 7 hereof. Such Certificate of Acceptance shall be conclusive evidence that the unit of the Equipment covered thereby has been delivered to the Railroad and conforms with the Specifications and is acceptable to the Railroad in all details.

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

Article 3. Purchase Price and Payment. The base price or prices per unit of the Equipment, exclusive of interest and freight charges, are set forth in Schedule B hereto (which price is hereinafter called the base price). The base price or prices shall be subject to increase or decrease in accordance with Article 4 hereof, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased.

The Equipment shall be settled for on one or more Closing Dates (fixed as hereinafter provided) as specified in Item 2 of Schedule A hereto (the Equipment settled for on each such Closing Date being hereinafter called a Group); *provided, however*, that, if there shall at any time have been delivered to and accepted by the Railroad units of the Equipment, and the Builder shall be prevented by any one or more of the causes referred to in the second paragraph of Article 2 hereof from delivering additional units for a period of 30 days or

more following the last date of delivery with respect to such delivered and accepted units, such delivered and accepted units shall constitute an additional Group for the purpose of settlement.

The Railroad hereby acknowledges itself to be indebted to the Manufacturer in the amount of, and hereby promises to pay in cash to the Manufacturer at the office of the Manufacturer, or at such other place as the Manufacturer may designate, the Purchase Price of the Equipment and prepaid freight, as follows:

(a) On the Closing Date (as hereinafter defined) with respect to each group:

(i) the amount, if any, by which the estimated aggregate purchase price of all the units of the Equipment in such Group, as stated in the invoices for such units (hereinafter called the Group Invoiced Purchase Price), exceeds the lesser of (a) 85% of the Group Invoiced Purchase Price, and (b) the applicable Committed Amount shown in Item 3 of Schedule A multiplied by the number of such units in such Group; and

(ii) the amount, if any, of prepaid freight paid by the Builder in respect of such units upon shipment thereof from the Builder's plant to the place for delivery thereof designated by the Railroad;

(b) Upon receipt of a final certificate of aggregate purchase price (hereinafter called the Final Certificate) of all the units of the Equipment, the amount, if any, by which the final aggregate purchase price of all the units of the Equipment, as stated in the final invoice for such units (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph; and

assessments, licenses, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof, or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will then execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will then execute and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instru-

ments 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, all at the expense of the Railroad. 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 to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

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

where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the name, emblem, or initials of the Railroad or with the name, emblem, or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On or before March 1 in each year the Railroad shall pay to the Manufacturer a sum equal to the fair value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however*, that from time to time, in any calendar year, when the total fair value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of which a payment shall theretofore have been made to the Manufacturer pursuant

to this Article 8) shall exceed \$100,000, the Railroad, within 30 days of such event, shall pay to the Manufacturer a sum equal to the fair value of such units.

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation at the annual rate (but not in excess of 6%) approved by the Interstate Commerce Commission for such unit for each period of 12 calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment (other than work or passenger equipment), first put into service no earlier than the date of this Agreement, to replace such unit having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments of the indebtedness hereunder thereafter falling due in the inverse order of their maturities (but without premium and whether or not such amount shall be sufficient to prepay one or more entire instalments). In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the Railroad shall pay any additional cost of such

assessments, licenses, charges, fines or penalties so paid unless the Manufacturer shall have been legally liable in respect thereof, or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Manufacturer shall and hereby does retain the full legal title to and property in the Equipment delivered to the Railroad hereunder until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

When and only when the Manufacturer shall have been paid the full indebtedness in respect of the Purchase Price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer, except that the Manufacturer, if requested by the Railroad so to do, will then execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will then execute and deliver at the same place, for record or for filing in all necessary public offices, such instrument or instru-

ments 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, all at the expense of the Railroad. 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 to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

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

where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the name, emblem, or initials of the Railroad or with the name, emblem, or initials of a subsidiary or affiliated railroad company controlling or controlled by the Railroad or may letter it in some other appropriate manner for convenience of identification of the interest of the Railroad therein.

ARTICLE 8. *Lost, Destroyed or Damaged Equipment.* In the event that any unit of the Equipment shall be worn out, lost destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called "Casualty Occurrences") prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, the Railroad shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Manufacturer in regard thereto. On or before March 1 in each year the Railroad shall pay to the Manufacturer a sum equal to the fair value of all units of the Equipment having suffered a Casualty Occurrence in the preceding calendar year in respect of which a payment shall not theretofore have been made to the Manufacturer as hereinafter provided; *provided, however*, that from time to time, in any calendar year, when the total fair value of the units of the Equipment having suffered a Casualty Occurrence (exclusive of units of the Equipment having suffered a Casualty Occurrence in respect of which a payment shall theretofore have been made to the Manufacturer pursuant

to this Article 8) shall exceed \$100,000, the Railroad, within 30 days of such event, shall pay to the Manufacturer a sum equal to the fair value of such units.

For all purposes of this Article 8 the value of any unit suffering a Casualty Occurrence shall be the Purchase Price of such unit less depreciation at the annual rate (but not in excess of 6%) approved by the Interstate Commerce Commission for such unit for each period of 12 calendar months elapsed since the date of delivery and acceptance of such unit to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Manufacturer pursuant to this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Manufacturer, to prepay indebtedness in respect of the Purchase Price of the Equipment hereunder or to or toward the cost of a unit or units of standard gauge railroad equipment (other than work or passenger equipment), first put into service no earlier than the date of this Agreement, to replace such unit having suffered a Casualty Occurrence, as the Railroad may direct in such written instrument. In case any such money shall be applied to prepay indebtedness, it shall be so applied to instalments of the indebtedness hereunder thereafter falling due in the inverse order of their maturities (but without premium and whether or not such amount shall be sufficient to prepay one or more entire instalments). In case of replacement the amount to be paid by the Manufacturer in respect of any replacing unit shall not exceed the lesser of the cost of such unit or the amount which such unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the Railroad shall pay any additional cost of such

unit. The amount which any such replacing unit would have cost if acquired on the earliest date when any of such money was paid to the Manufacturer and the applicable rate of depreciation on the replaced unit shall be conclusively determined by the certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad.

The Railroad will cause any replacing unit to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all of the terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacements shall be free and clear of all liens, security interests and other encumbrances and shall be taken initially and shall remain in the name of the Manufacturer subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file and record all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Manufacturer to such replacements.

Whenever the Railroad shall file with the Manufacturer pursuant to the foregoing provisions of this Article 8, a written direction to apply money to or toward the cost of a replacement unit, the Railroad shall file therewith:

- (1) a certificate of a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment) first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article

8 and certifying the cost of such replacing unit and the amount which such replacing unit would have cost if acquired on the earliest date when any such money was paid to the Manufacturer; and

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

So long as none of the events of default specified in Article 18 hereof shall have occurred and be continuing, any money paid to the Manufacturer pursuant to this Article 8, shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, maturing in not more than five years from the date of such investment (hereinafter called Government Securities), as may be specified in such written direction. Any such obligation shall from time to time be sold and the proceeds reinvested in such Government Securities as the Railroad may in writing direct. Any Government Securities shall be sold by the Manufacturer at or about the time required for the application of the proceeds thereof to the prepayment of the indebtedness in respect of the Purchase Price if such application is requested by the Railroad as hereinabove provided or is otherwise required by the provisions of this Article 8. Any interest or earned discount received by the Manufacturer on any Government Securities shall be held by the Manufacturer and applied as herein provided. Upon the disposition of any Government Securities by the Manufacturer pursuant hereto, whether at maturity or by sale or redemption or otherwise, any amounts received thereon, including any interest received by the Manufacturer upon or prior to such disposition, up to the cost (including accrued in-

terest or earned discount) thereof, shall be held without interest by the Manufacturer for application pursuant to this Article 8, and any excess shall be held without interest subject to the order of the Railroad. If the amounts so received on such Government Securities (including such interest or earned discount) shall be less

than such cost, the Railroad will promptly pay to the Manufacturer an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Manufacturer in connection with the purchase and sale of Government Securities.

In the event that any moneys paid to, or held by, the Manufacturer pursuant to this Article 8 are applied to the prepayment of indebtedness in respect of the Purchase Price the Railroad will pay to the Manufacturer on the date of such application interest then accrued and unpaid on the indebtedness so prepaid.

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

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

ARTICLE 10. *Builder's Warranty of Material and Workmanship.* The Builder guarantees that the Equipment will be built in accordance with the final agreed Specifications and Drawings, and warrants the Equipment to be free

from defects in material (except to the specialties incorporated therein not manufactured by the Builder) and workmanship under normal use and service, the Builder's obligation being limited to making good at its plant any part or parts of any unit of the Equipment which shall, at any time within one year after delivery to the customer, be returned to the Builder with transportation charges prepaid and which the Builder's examination shall disclose to its satisfaction to have been thus defective. THE BUILDER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. The Railroad's rights under the foregoing warranty shall be its sole and exclusive remedy and the Builder will have no liability for incidental, consequential or commercial losses. The foregoing warranty of the Builder is expressly in lieu of all other warranties expressed or implied and of all other obligations or warranties on the part of the Builder except for its obligations under Articles 1, 2, and 16 hereof and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment.

ARTICLE 11. *Compliance With Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for opera-

tion under such laws and rules; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Manufacturer, adversely affect the property or rights of the Manufacturer hereunder.

ARTICLE 12. *Reports and Inspections.* On or before March 1, in each year, commencing with the year 1971, the Railroad will furnish to the Manufacturer (a) a statement showing, as of the preceding December 31, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use, whether by accident, or otherwise, during the preceding calendar year, and such other information regarding the condition and state of repair of the Equipment as the Manufacturer may reasonably request, and (b) a statement that no default and no event which, if not cured, would, with the passage of time, become a default under this Agreement, exists or has occurred since the last statement so delivered, or, if such a default or event exists or has occurred, the details thereof and the actions of the Railroad taken and to be taken to cure same, such statements to be certified by the President, a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Railroad. The Manufacturer shall have the right, by its agents, but shall be under no obligation to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 13. *Possession and Use.* The Railroad, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Railroad, to the possession of the Equipment and the use thereof upon the lines of railroad

owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which the Railroad has trackage rights or rights for operation of its trains, and upon connecting and other carriers in the usual interchange of traffic, and may lease the Equipment to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement.

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

ARTICLE 15. *Railroad's Indemnities.* The Railroad agrees to indemnify and save harmless the Manufacturer 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 Manufacturer of title to the Equipment or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Manufacturer. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as

provided in Article 6 hereof, or the termination of this Agreement in any manner whatsoever.

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

ARTICLE 16. *Patent Indemnities.* Except in cases of articles and materials specified by the Railroad and not manufactured by the Builder, and designs, systems, processes, and formulae utilized by the Builder in or about the Equipment or any unit of the Equipment, as a result of specification by the Railroad, the Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad or its assigns because of the use in or about the construction or operation of the Equipment or any unit thereof of any article, material, design, system, process or formula which infringes or which is claimed to infringe upon any patent or other right, and the Railroad will likewise protect, indemnify and hold harmless the Manufacturer and the Builder from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer or the Builder because of use in or about the construction or operation of the Equipment or any unit thereof of any article or material specified by the Railroad and not manufactured by the Builder or any design, system, process or formula utilized by the Builder in or about the construction of the Equipment or any unit of the Equipment as the result of specifications

thereof by the Railroad which infringes or is claimed to infringe upon any patent or other right other than patents or other rights controlled by the Builder.

ARTICLE 17. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Manufacturer. An assignment or transfer to a railroad company or other purchaser (including a successor corporation by consolidation or merger) 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 Manufacturer, shall assume and agree to perform each and all of the obligations and covenants of the Railroad hereunder, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Manufacturer 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 the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained in Articles 10 and 16 hereof, or relieve the Railroad of its obligations to the Builder under Articles 2, 3, 5, 15 and 16 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and

such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee specified in the aforesaid notice.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to transfer or assign agreements of this character and understands that the transfer or assignment of this Agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Railroad expressly represents and agrees, 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 Manufacturer hereunder, and for the purpose of inducing such acquisition, that in the event of such transfer or assignment by the Manufacturer 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 in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, 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 transfer or assignment, or successive transfers or assignments by the Manufacturer, of title to the Equipment and of the Manufacturer's rights hereunder in respect thereof, the Railroad will, whenever requested by such transferee or assignee, change the name marking on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such plates or other marking to bear such words or legend as shall be specified by such transferee or assignee, subject to requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad relating to such marking for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of changing any marking in the event of any transfer or assignment of title to not less than all the Equipment at the time covered by this Conditional Sale Agreement shall be borne by the Railroad, and, in the event of any transfer or assignment of title to less than all such Equipment, such cost shall be borne by the transferee or assignee.

In the event of any such transfer or assignment prior to the completion of delivery of the Equipment, the Railroad will, in connection with each settlement for a Group of Equipment subsequent to such transfer or assignment, deliver to the assignee at least 5 business days prior to the Closing Date with respect to such Group, all documents required by the terms of such transfer or assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies 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 payment shall not have been previously paid by the

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 Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at 10% per annum.

ARTICLE 18. *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, when due and payable hereunder, any sum payable by the Railroad as herein provided for indebtedness in respect of the Purchase Price of the Equipment or for interest thereon and such failure shall continue for more than 10 business days; or

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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter modified, amended or substituted, shall be filed by or against the Railroad and, unless such petition shall within 30 days from the filing thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or de-

creed, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceedings shall within 30 days from the filing or effective date thereof be dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such 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 receiver or receivers appointed for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements

tlement shall in any way impair or prejudice the rights of the Assignee against the Railroad.

The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, system, process and formula, article or material which infringes, or is claimed to infringe on any patent right, except for any design, system, process and formula, article or material specified by the Railroad and not manufactured by the Builder. Builder's obligation so to indemnify, protect and hold harmless the Assignee as provided in the preceding sentence is conditional upon the Assignee having timely notified the Builder of the assertion of any liability or claim and giving the Builder the right, at Builder's expense to compromise, settle, or defend against such liability or claim.

The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof; provided that the foregoing agreement of the Builder shall not apply to any unit of the Equipment until such unit is paid for by the Assignee as provided in Section 6 hereof.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously marked on each side thereof, the following legend in letters not less than one-half inch in height:

“FIRST NATIONAL BANK IN ST. LOUIS,
ASSIGNEE, OWNER.”

SECTION 5. Upon request of the Assignee, its successors and assigns, and payment to it under Article 3 of the Conditional Sale Agreement and under Section 6 hereof, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein assigned or in the Equipment.

SECTION 6. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Builder an amount equal to that portion of the Group Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Railroad pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 5 business days prior to such Closing Date, the following documents, in such number of counterparts as may reasonably be requested, in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad in accordance

with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of the Railroad and further stating that all such units have been marked as required by Section 4 hereof;

(c) An invoice or invoices for the units of the 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 counsel for the Railroad stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding upon the Railroad and enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and author-

ity to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; and

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

Within 10 business days after delivery to the Assignee of the final Certificate (as defined in the Conditional Sale Agreement) accompanied by or bearing thereon a certification by the Railroad as to the correctness of the stated price, the Assignee shall pay to the Builder the amount, if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable by the Railroad pursuant to subparagraph (c) of the third paragraph of Article 3 of

the Conditional Sale Agreement shall exceed the amounts theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. In no event shall the aggregate of sums payable to the Builder by the Assignee pursuant to this Section 6 exceed the lesser of (i) an amount equal to 85% of the Final Invoiced Purchase Price and (ii) the applicable Committed Amount per unit of Equipment as shown in Item 3 of Schedule A to the Conditional Sale Agreement multiplied by the number of such units covered by such Final Invoice. The Final Certificate shall be delivered on or before one year from the date of this Agreement and Assignment.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof. The Assignee shall at the request of the Builder or the Railroad execute or join in the execution of such supplemented agreement as may be deemed necessary or appropriate to exclude any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale

Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

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

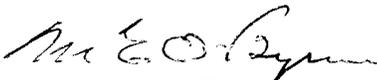
SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified

copy thereof, to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified in the introductory paragraph of this Agreement and Assignment, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

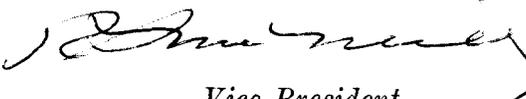
PACIFIC CAR AND FOUNDRY COMPANY

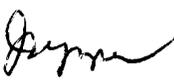
By 
Vice President

Attest: 
Asst. Secretary

[CORPORATE SEAL]

FIRST NATIONAL BANK IN ST. LOUIS

By 
Vice President

Attest: 
ASST Cashier

[CORPORATE SEAL]

STATE OF WASHINGTON, }
COUNTY OF KING. } ss.

On this 15th day of June, 1970, before me personally appeared M. G. O'Byrne, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACIFIC CAR AND FOUNDRY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Priscilla White
Notary Public

My Commission Expires July 1, 1973
[NOTARIAL SEAL]

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

On this 18th day of June, 1970, before me personally appeared H. J. McMillan to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL BANK IN ST. LOUIS; that one of the seals affixed to the foregoing instrument is the 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.

My Commission Expires January 22, 1973

My Commission Expires
[NOTARIAL SEAL]

Notary Public
Hilma McMillan

Notary for the County of St. Louis
which adjoins the City of St. Louis

in Item 4 of Schedule A hereto. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Manufacturer, as the case may be, by such assignee.

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

ARTICLE 26. *Effect and Modification of Agreement.* This Agreement exclusively and completely states the rights of the Manufacturer and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Manufacturer and the Railroad.

ARTICLE 27. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

ARTICLE 28. *Definitions.* The term "Manufacturer" whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation

named in Item 1 of Schedule A hereto, and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated for convenience as of the date specified in the introductory paragraph of this Agreement, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

PACIFIC CAR AND FOUNDRY COMPANY

By

M. E. Ryan
Vice President

Attest:

E. H. ...
Asst. Secretary

[CORPORATE SEAL]

THE TEXAS AND PACIFIC RAILWAY COMPANY

By

J. L. ...
Vice President

Attest:

C. A. ...
Secretary

[CORPORATE SEAL]

STATE OF WASHINGTON, }
COUNTY OF KING. } ss.

On this 15th day of June, 1970, before me personally appeared M E O'Brien, to me personally known, who being by me duly sworn, says that he is a Vice President of PACIFIC CAR AND FOUNDRY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Russella White
Notary Public

My Commission Expires July 1, 1973

[NOTARIAL SEAL]

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

On this 11th day of JUNE, 1970, before me personally appeared D.L. MANION, to me personally known, who being by me duly sworn, says that he is a Vice President of THE TEXAS AND PACIFIC RAILWAY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

D.L. Manion
Notary Public

My Commission Expires Sept. 28, 1970

[NOTARIAL SEAL]

SCHEDULE A.

PACIFIC CAR AND FOUNDRY COMPANY.

Item 1: Pacific Car and Foundry Company, a Washington corporation.

Item 2: Except as provided in Article 3. For the purpose of making settlement, the Equipment shall be delivered to and accepted by the Railroad in one Group consisting of all 100 units of the Equipment.

Item 3: The Committed Amount: \$18,000 per unit of Equipment (limited to \$1,800,000 aggregate for all 100 units of Equipment).

Item 4: 1400 North Fourth Street, Renton, Washington 98055.

SCHEDULE B.

PACIFIC CAR AND FOUNDRY COMPANY, BUILDER AND MANUFACTURER

THE TEXAS AND PACIFIC RAILWAY COMPANY,
VENDEE (RAILROAD).

Type	Quantity	Specifications	Railroad's Car Nos.	Unit Base Price*	Delivery
70-Ton Cushion Underframe Insulated Box Cars	100	Car Builder Spec. PC-168, April 20, 1970	780575- 780674, both incl.	60 cars—\$22,625 40 cars— 22,900	July 1970

All in accordance with Railroad's Purchase Order dated Dec. 16, 1969, as supplemented or amended from time to time.

* Prices rounded to nearest dollar.

All prices and delivery f. o. b. Renton, Washington.

AGREEMENT AND ASSIGNMENT dated as of June 15, 1970, by and between the corporation first named in the testimonium below (hereinafter called the Builder), and FIRST NATIONAL BANK IN ST. LOUIS (hereinafter called the Assignee), a national banking association organized under the laws of the United States of America.

WHEREAS the Builder and THE TEXAS AND PACIFIC RAILWAY COMPANY, a corporation created and existing under and by virtue of Acts of Congress of the United States of America (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of June 15, 1970 (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment described or referred to in the Conditional Sale Agreement (hereinafter called the Equipment);

NOW THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, (a) all the right, title and interest of the Builder in and to the Equipment and each unit thereof when and as severally delivered and accepted and, as to each such unit upon payment to the Builder of the amounts required to be paid under Section 6 hereof in respect of such unit, (b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement in respect of the Equipment (except the right to manufacture and the right to receive the

payments specified in the third paragraph of Article 2 thereof and in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof and in the last paragraph of Article 17 thereof, and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement on account of the Railroad's indebtedness in respect of the Purchase Price of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded, and (c) all of the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, 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 Conditional Sale Agreement); *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 Conditional Sale Agreement or in respect of its obligations contained in Articles 10 and 16 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder under Articles 2, 5, 15 and 16 (except that the Assignee shall also be entitled to the benefit of the Railroad's obligation under Articles 15 and 16) of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad in respect of the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby

authorizes and empowers the Assignee, in the Assignee's own name or in the name of 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 compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it will construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of any unit of the Equipment it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

SECTION 3. The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by

the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of purchase price or to enforce any provision of the Conditional Sale Agreement, the Builder will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation in respect of the Equipment or the manufacture, construction, delivery or warranty thereof, or under Articles 10 and 16 of the Conditional Sale Agreement, 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. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments. The Assignee will give notice to the Builder of any suit, proceeding or action by the Assignee herein described, and shall promptly move or take other appropriate action on the basis of Article 17 of the Conditional Sale Agreement, to strike any defense, set-off, counterclaim or recoupment asserted by the Railroad therein, and if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, set-off, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee shall promptly notify the Builder of any such defense, set-off, counterclaim or recoupment asserted by the Railroad and the Builder shall thereafter be given the right by the Assignee, at the Builder's expense, to compromise, settle or defend against such defense, set-off, counterclaim or recoupment; provided, however, no such compromise or set-

tlement shall in any way impair or prejudice the rights of the Assignee against the Railroad.

The Builder will indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, system, process and formula, article or material which infringes, or is claimed to infringe on any patent right, except for any design, system, process and formula, article or material specified by the Railroad and not manufactured by the Builder. Builder's obligation so to indemnify, protect and hold harmless the Assignee as provided in the preceding sentence is conditional upon the Assignee having timely notified the Builder of the assertion of any liability or claim and giving the Builder the right, at Builder's expense to compromise, settle, or defend against such liability or claim.

The Builder agrees that any amount payable to it by the Railroad in respect of the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien or charge on the Equipment or any unit thereof; provided that the foregoing agreement of the Builder shall not apply to any unit of the Equipment until such unit is paid for by the Assignee as provided in Section 6 hereof.

SECTION 4. The Builder covenants and agrees that, at the time of delivery of each unit of the Equipment to the Railroad, there will be plainly, distinctly, permanently and conspicuously marked on each side thereof, the following legend in letters not less than one-half inch in height:

“FIRST NATIONAL BANK IN ST. LOUIS,
ASSIGNEE, OWNER.”

SECTION 5. Upon request of the Assignee, its successors and assigns, and payment to it under Article 3 of the Conditional Sale Agreement and under Section 6 hereof, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein assigned or in the Equipment.

SECTION 6. The Assignee, on the Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of Equipment, shall pay to the Builder an amount equal to that portion of the Group Invoiced Purchase Price (as defined in said Article 3) of such Group not payable by the Railroad pursuant to subparagraph (a) of the third paragraph of said Article 3, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement, at least 5 business days prior to such Closing Date, the following documents, in such number of counterparts as may reasonably be requested, in form and substance satisfactory to it:

(a) A Bill of Sale from the Builder to the Assignee evidencing the transfer to the Assignee of title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) A certificate or certificates signed by an officer or other authorized representative of the Railroad stating that the units of the Equipment in such Group have been delivered to the Railroad in accordance

with the Conditional Sale Agreement and have been inspected and accepted by him on behalf of the Railroad and further stating that all such units have been marked as required by Section 4 hereof;

(c) An invoice or invoices for the units of the 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 counsel for the Railroad stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and is a valid instrument binding upon the Railroad and enforceable against the Railroad in accordance with its terms, (iii) the Conditional Sale agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and that no other filing or recordation is necessary for the protection of the rights of the Assignee in any State of the United States of America, (iv) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(e) An opinion of counsel for the Builder stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its State of incorporation and has the power and author-

ity to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the right, title and interest of the Builder in and to the Conditional Sale Agreement purported to be assigned to the Assignee by this Assignment, and (v) title to the units of the Equipment in such Group is validly vested in the Assignee, and that such units, at the time of delivery thereof to the Railroad, were free of all claims, liens, security interests and other encumbrances except only the rights of the Railroad under the Conditional Sale Agreement; and

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

Within 10 business days after delivery to the Assignee of the final Certificate (as defined in the Conditional Sale Agreement) accompanied by or bearing thereon a certification by the Railroad as to the correctness of the stated price, the Assignee shall pay to the Builder the amount, if any, by which that portion of the Final Invoiced Purchase Price (as defined in the Conditional Sale Agreement) which shall be payable by the Railroad pursuant to subparagraph (c) of the third paragraph of Article 3 of

the Conditional Sale Agreement shall exceed the amounts theretofore paid to the Builder pursuant to the foregoing provisions of this Section 6. In no event shall the aggregate of sums payable to the Builder by the Assignee pursuant to this Section 6 exceed the lesser of (i) an amount equal to 85% of the Final Invoiced Purchase Price and (ii) the applicable Committed Amount per unit of Equipment as shown in Item 3 of Schedule A to the Conditional Sale Agreement multiplied by the number of such units covered by such Final Invoice. The Final Certificate shall be delivered on or before one year from the date of this Agreement and Assignment.

It is understood and agreed that the Assignee shall not be required to make any payment in respect of, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 thereof. The Assignee shall at the request of the Builder or the Railroad execute or join in the execution of such supplemented agreement as may be deemed necessary or appropriate to exclude any such Equipment from the Conditional Sale Agreement and from this Agreement and Assignment.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 7. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 8. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale

Agreement was duly authorized and lawfully executed and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon the Builder and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

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

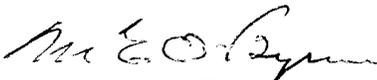
SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 10. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. The Assignee agrees to deliver one of such counterparts, or a certified

copy thereof, to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Agreement and Assignment is dated for convenience as of the date specified in the introductory paragraph of this Agreement and Assignment, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

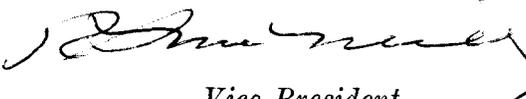
PACIFIC CAR AND FOUNDRY COMPANY

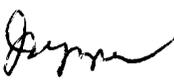
By 
Vice President

Attest: 
Asst. Secretary

[CORPORATE SEAL]

FIRST NATIONAL BANK IN ST. LOUIS

By 
Vice President

Attest: 
ASST Cashier

[CORPORATE SEAL]

STATE OF WASHINGTON, }
COUNTY OF KING. } ss.

On this 15th day of June, 1970, before me personally appeared M. G. O'Byrne, to me personally known, who, being by me duly sworn, says that he is a Vice President of PACIFIC CAR AND FOUNDRY COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Priscilla White
Notary Public

My Commission Expires July 1, 1973
[NOTARIAL SEAL]

STATE OF MISSOURI, }
CITY OF ST. LOUIS. } ss.

On this 18th day of June, 1970, before me personally appeared H. J. McMillan, to me personally known, who, being by me duly sworn, says that he is a Vice President of FIRST NATIONAL BANK IN ST. LOUIS; that one of the seals affixed to the foregoing instrument is the 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.

My Commission Expires January 22, 1973

My Commission Expires
[NOTARIAL SEAL]

Notary Public
Hilma McMillan

Notary for the County of St. Louis
which adjoins the City of St. Louis

ACKNOWLEDGMENT OF NOTICE OF
ASSIGNMENT.

Receipt of a copy of, and due notice of the assignment
made by, the foregoing Agreement and Assignment is
hereby acknowledged as of *JUNE 15*, 1970.

THE TEXAS AND PACIFIC RAILWAY COMPANY

By *J. L. Manion.*
Vice President