

Counterpart No. 4
Of 8 Counterparts

5803

RECORDATION NO. _____ Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

1970 RAILROAD RECONSTRUCTED EQUIPMENT FINANCING



**CONDITIONAL SALE AGREEMENT
AGREEMENT AND ASSIGNMENT**

dated as of June 15, 1970



EXHIBIT B
TO FINANCE
AGREEMENT

CONDITIONAL SALE AGREEMENT

THIS AGREEMENT, dated as of June 15, 1970, by and between L&N INVESTMENT CORPORATION, a corporation of the State of Delaware, hereinafter sometimes called "Vendor", party of the first part, and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation duly organized and existing under the laws of the Commonwealth of Kentucky, hereinafter sometimes called the "Vendee", party of the second part,

WITNESSETH:

That, in consideration of the mutual promises of the parties hereto, hereinafter set forth, the parties hereto agree as follows:

1. RECONSTRUCTION, SALE AND DELIVERY. The Vendor, having contracted for the reconstruction of 800 box cars, hereby agrees to reconstruct, sell and deliver to the Vendee, and the Vendee hereby agrees to buy from the Vendor and to accept delivery as hereinafter provided, and to pay therefor as hereinafter set forth, the following-described railroad equipment (hereinafter sometimes referred to as "cars"):

Lot No. 1: Two Hundred (200) reconstructed 50' 6" box cars, of 50-ton nominal capacity, equipped with 10' doors, nailable steel floors and roller bearings, to bear Vendee's road numbers 110000 through 110199.

Lot No. 2: Four Hundred Twenty-Five (425) reconstructed 40' 6" box cars, of 50-ton nominal capacity, equipped with 8' doors, nailable steel floors and roller bearings, to bear Vendee's road numbers 8100 through 8524.

Lot No. 3: One Hundred Seventy-Five (175) reconstructed 40' 6" box cars of 50-ton nominal capacity, equipped with 10' doors, nailable steel floors, roller bearings and DF equipment, to bear Vendee's road numbers 11925 through 12099.

The Vendor guarantees that the cars will be built of first-class materials and workmanship throughout. The Vendor warrants that the cars will comply with the requirements of law and with the existing standards approved and used generally by Class I railroads in the United States of America, and that the cars will comply with all existing Department of Transportation and Interstate Commerce Commission requirements and specifications and will be of a standard type which will comply with the interchange rules of the Association of American Railroads applicable thereto.

The Vendor hereby agrees to deliver the cars to Vendee on the tracks of Vendee at Louisville, Kentucky, or such other point or points as Vendee may designate, freight charges to be assumed by Vendee, ready for service, free of all liens, encumbrances and claims of any nature by or in favor of any person or party and subect only to the reservation of title thereto by the Vendor in accordance with the provisions hereof. Vendee shall arrange for inspection and acceptance of each of the cars by a duly authorized agent at the place of delivery and shall execute in quadruplicate a certificate of inspection and acceptance of such cars. An original of such certificate shall be furnished to the Vendor which certificate shall also state that the cars conform to all the requirements of this Agreement. Each such certificate with respect to the cars covered thereby shall be final and conclusive evidence that such cars conform in workmanship, material, construction and in all other respects to the requirements and provisions of this Agreement.

Vendee shall pay the purchase price of each such car as hereinafter provided or as may be specified in any supplemental agreement.

The estimated base unit purchase price for each such car in Lots Nos. 1, 2 and 3 is as follows:

Lot No. 1	\$11,772.00
Lot No. 2	\$10,150.00
Lot No. 3	\$10,940.00

The aggregate estimated base purchase price of all eight hundred (800) cars is \$8,582,650. The said estimated prices are subject to possible increase or reduction depending upon variations in the cost of labor and the amount of materials needed during reconstruction. The

final purchase price, however, shall be stated in invoices to be rendered upon delivery of the cars.

2. PAYMENT OF PURCHASE PRICE. (A) Conditional only upon the receipt and acceptance of said cars which may be conclusively presumed from the execution of certificates of inspection and acceptance above referred to, the Vendee acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor, at such place as may be designated by the Vendor, the purchase price of the cars so accepted, as hereinabove provided, in the following manner:

For the purpose of making settlement for the cars, said cars shall be divided into groups (each group being hereinafter called a "Group"). The number of cars in each Group shall be not less than 200 cars. The term "Settlement Date" with respect to a Group of cars shall mean such date as Vendee shall specify, after having inspected and accepted the cars in, and having received the invoice for, such Group, in a written notice delivered to Vendor at least seven business days prior to the date so specified. Upon each Settlement Date, Vendee shall pay to Vendor any sums owed by it for a Group of cars delivered and accepted, which date shall in no event be later than fourteen business days after receipt by Vendee of the invoice or invoices for such Group. In the event of the assignment of this Agreement, the Settlement Date shall be the day upon which the assignee or assignees shall pay to the Vendor the deferred purchase price, as hereinafter stated, of the Group of cars being settled for. The term "settle for" shall mean the holding of a Settlement Date with respect to such cars.

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

That part of the purchase price of each car, as stated in the invoice therefor, which is in excess of the deferred purchase price thereof as therein stated, which said deferred purchase price shall be stated in each invoice so rendered, shall be paid to Vendor upon receipt by Vendee of such invoice or invoices covering a Group of cars.

The total deferred purchase price of all 800 cars is \$6,400,000 payable as follows:

As to each car in Lot No. 1, Eight Thousand Five Hundred Forty

Dollars (\$8,540.00) of the purchase price, being the deferred purchase price, shall be paid in 20 equal consecutive semi-annual installments of \$427.00 each.

As to each car in Lot No. 2, Seven Thousand Seven Hundred Fifty Dollars (\$7,750.00) of the purchase price, being the deferred purchase price, shall be paid in 20 equal consecutive semi-annual installments of \$387.50 each.

As to each car in Lot No. 3, Seven Thousand Nine Hundred Ninety Dollars (\$7,990.00) of the purchase price, being the deferred purchase price, shall be paid in 20 equal consecutive semi-annual installments of \$399.50 each.

The first semi-annual installment of principal in respect of each car shall be due and payable on July 1, 1971, and subsequent installments shall become due and payable on the first day of January and July of each year thereafter until such deferred purchase price shall have been paid in full. Said semi-annual installments of principal shall be serially numbered 1-20, inclusive.

(B) Interest shall be payable in semi-annual installments with the first installment becoming due and payable on July 1, 1971, and subsequent installments shall become due and payable on the first day of January and July of each year thereafter until the maturity date of the final semi-annual installment of principal. Such interest shall be computed at the "prime rate", as hereinafter defined, plus $\frac{1}{4}$ of 1% per annum on the unpaid principal of the deferred purchase price of each car from the respective Settlement Date of such car to the respective maturities of the semi-annual installments of principal. The first installment of interest shall cover the interest for each car settled for under the terms of this agreement on or before March 31, 1971, accrued from the Settlement Date with respect to such car.

The "prime rate" is defined as the lowest rate in effect by the majority of the seven (7) largest New York City banks to substantial and responsible borrowers for short-term loans. In the event that, from time to time, the prime rate shall have been changed by a majority of said New York City banks, then, for purposes herein, the prime rate shall be deemed to be the changed rate, to become effective on the effective date of such change announced by a majority of said banks.

All interest provided for in this Agreement shall be calculated on the basis of a 30-day month, 360-day year.

At the time of the payment of each semi-annual installment on account of the principal of the deferred purchase price of the cars, the Vendee shall pay all interest on the unpaid balance of principal accrued to the date of the payment of such installment, and, if payment of any such installment of principal or interest be made after its due date, interest thereon shall be paid (to the extent permitted by law) at the rate of seven per cent (7%) per annum or at the prime rate plus one per cent (1%) per annum, whichever is greater, from said due date until payment be made therefor.

(C) It is mutually agreed that, in the event that a Settlement Date for any of the cars cannot be held on or before April 30, 1971, any such car or cars shall be excluded from the terms and provisions of this Agreement. Any such car or cars so excluded from the terms and provisions of this Agreement shall not be included in the term "cars" as used in this Agreement.

(D) In the event Vendor shall assign this Agreement prior to delivery of the first car, and if the assignee or assignees hereof (called in this Subsection (D) of Section 2 the "Assignee") shall have agreed to pay (subject to such conditions as may have been agreed upon between said Vendor and the Assignee) to said Vendor an amount equal to the deferred purchase price of each car upon the Settlement Date for a Group of such cars in accordance with the terms of this Agreement, then anything in this Section 2 to the contrary notwithstanding, the Vendee (for the purpose of inducing such as assignment) agrees as follows:

(i) Vendee agrees that there shall be due and payable interest, at the rates set out in Subsection (B) of this Section 2, on the deferred purchase price of cars not settled for by March 31, 1971: (a) from March 31, 1971 to the Settlement Date for any cars settled for after March 31, 1971 and on or before April 30, 1971, and (b) from March 31, 1971 to April 30, 1971 for any cars not settled for on or before April 30, 1971.

(ii) In the event any of the cars shall not have been settled for on or before March 31, 1971, the Assignee, by accepting an

the Vendor and in accordance with a statement of new numbers previously filed with the Vendor by the Vendee.

Vendee agrees not to place or permit to be placed upon the cars or any replacements thereof any marks, signs or words which might be interpreted as a claim of ownership of the cars by any person, firm or corporation other than the Vendor or its assignee; except, however, Vendee may cause each car to be lettered "Louisville and Nashville Railroad Company", or "L. & N. R. R. Co.", or in some other appropriate manner for convenience of identification of Vendee's right to use such cars.

When and only when the Vendor has been paid the full purchase price for all of the cars, together with interest and any and all other payments as herein provided, and all of the Vendee's covenants and conditions herein contained have been performed by the Vendee, absolute right to possession of, title to and property in, all of the cars shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor, and upon full payment as aforesaid, Vendor will, if requested by Vendee to do so, execute, acknowledge and deliver to Vendee an instrument whereby the Vendor will acknowledge satisfaction of all payments required to be made by Vendee by any provision of this Agreement, and will transfer and convey to Vendee all right, title and interest in or to the cars.

4. EXPENSES AND TAXES. All payments by Vendee hereunder shall be free of expense to Vendor for collection or other charges, and no deductions shall be made therefrom of the amount of any federal, state or other taxes, assessments or governmental charges (other than federal income taxes or net income taxes imposed by or under authority of any state) levied or imposed directly upon this Agreement or upon any assignment of or participation in any assignment of this Agreement, or which may be levied or imposed upon the cars, or the acquisition thereof, or upon the sale, shipment, delivery or use thereof, all of which expenses and taxes the Vendee assumes and agrees to pay in addition to the above mentioned purchase price of said cars. Vendee hereby specifically agrees also to pay to Vendor in addition to the purchase price of the cars, all sales taxes, or like taxes or charges which may be assessed, levied or imposed upon or with respect to the acquisition,

sale or delivery to or use by Vendee of the cars, or any of them, and which Vendor may be legally required to pay to any state or municipality or to the United States or other government.

Vendee shall also pay promptly all taxes, assessments and governmental charges which from time to time may be imposed upon the cars, or the earnings arising therefrom, or the operation thereof, or upon Vendor by reason of its ownership thereof, by any government of any country, state or political subdivision thereof in which the cars may be located or which shall have jurisdiction over the cars or any part of them, and Vendee agrees at all times to keep the cars free and clear of all liens and encumbrances whatsoever, other than the lien created by this Agreement and the lien of taxes not yet due or payable; *provided, however*, that Vendee shall not be required to pay any tax, assessment or other governmental charge the validity of which Vendee shall contest in good faith and by appropriate legal proceedings until such contest shall have been denied.

5. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Vendee shall comply in all respects with all laws of the United States of America and of the states in or through which the cars may be operated, covering the use, operation or maintenance of the cars, with the interchange rules of the Association of American Railroads, and with the lawful rules, with respect to the cars, of the Department of Transportation, Interstate Commerce Commission, and of every other legislative, administrative or judicial body exercising any power or jurisdiction over the cars; and in the event that said laws or rules require any alterations of any of the cars, or any additional equipment or appliances thereon, Vendee shall conform therewith at its own expense and shall maintain the cars in proper condition for operation under such laws and rules during the life of this Agreement and any supplement thereto; provided, however, that Vendee shall have the right to contest in good faith and by appropriate legal proceedings any such laws or rules.

6. REPLACEMENTS AND MAINTENANCE. The Vendee covenants and agrees that it will at all times after the delivery of such cars, maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss or destruction of said cars from whatever cause arising.

Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenant of indemnity shall continue in full force and effect for the benefit of the Vendor, its successors and assigns, notwithstanding the full payment of the purchase price and the conveyance of the cars, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee agrees to indemnify, protect and hold harmless the Vendor, its successors and assigns, 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 Vendor, its successors and assigns, because of the use in or about the construction or operation of any of the cars of any design, article or material infringing or claimed to infringe on any patent or other right.

8. ASSIGNMENT OF INTEREST OF VENDOR. This Agreement, all or any of the rights of the Vendor under this Agreement and any supplement hereto, including the right to receive the payments herein provided, and its title and ownership in and to the cars or any thereof, may be assigned by the Vendor and reassigned by any assignee at any time and from time to time, and no such assignment shall relieve Vendee of its obligations to Vendor or its successors or assigns.

In the event of any such assignment (other than the first assignment), the assignor shall give written notice to the Vendee, together with a counterpart or certified 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 Vendor's right, title and interest in and to the cars and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement and any supplement hereto shall, to the extent so assigned, be made to the assignee or upon its written order.

In the event of any such assignment prior to the delivery of the first car, the Vendee will deliver to such assignee, an opinion of coun-

sel for the Vendee, in form acceptable to such assignee to the effect that this Agreement is valid and effective; that the Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties, and to carry on its business as now conducted; that the terms, conditions and agreements herein contained on the part of the Vendee to be observed or performed are valid, effective and binding upon the Vendee, its successors and assigns, enforceable against it in accordance with its terms; that the execution of this Agreement on behalf of the Vendee is within the corporate powers of the Vendee, and has been duly authorized, executed and delivered; that this Agreement and the said assignment thereof have been filed, recorded or filed for record, prior to the delivery of any of the cars, as specified in Section 13 of this Agreement and that no other filing, registering or recording in any other office or agency is required to protect the rights of the Vendor and the Vendor's assignee or assignees; that no consent or approval of the Interstate Commerce Commission or of any other governmental or supervisory agency, including any state regulatory agency, is required with respect to the execution and delivery of the Conditional Sale Agreement or the assignment thereof, or the performance of the terms of either thereof; and that title to each car to be delivered to the Vendee under and pursuant hereto will, at the time each such car is delivered to the Vendee, be validly vested in such assignee, free of all claims, liens and encumbrances, except only the rights of the Vendee hereunder. Vendee will execute and deliver, or cause to be delivered, to such assignee, prior to payment of the deferred purchase price of each such car or cars by such assignee to the Vendor, a certificate stating that the amounts of the deferred purchase price and the full purchase price of each of said cars are the amounts shown on the invoice referred to in Section 1 and Section 2 hereof, and that the excess, if any, of the full purchase price over the deferred purchase price has been paid.

It is understood and agreed that the rights of the Vendor shall not be subject to any defense, set-off or counterclaim whatsoever, the Vendee hereby acknowledging and agreeing that it does not have nor will it ever have any defense, set-off or counterclaim against the Vendor or any assignee. The provisions of this paragraph may be relied upon by any such assignee or successive assignee as a continuing

offer by the Vendee to waive any remedies which it might otherwise have to enforce any and all such obligations of Vendor as against such assignee or successive assignee, which offer may be accepted by such assignee or successive assignee by payment to the assignor of the consideration for the purchase and assignment of this Agreement or of some or all of the rights hereunder and by giving notice of such assignment to the Vendee.

If this Agreement shall have been assigned by the Vendor, and the assignee shall have agreed to pay to the Vendor the deferred purchase price of the cars upon delivery to and acceptance of such cars by the Vendee in accordance with this Agreement, and the assignee shall fail to pay the deferred purchase price of the cars when due, the Vendor will promptly notify the Vendee of such event and if such amount shall not have been previously paid by assignee for any such car, Vendee will not later than 90 days after such due date, pay or cause to be paid to the Vendor the deferred purchase price of each such car.

The term "Vendor" whenever used in this Agreement means the L&N INVESTMENT CORPORATION; *provided, however*, that, to the extent that the rights, titles and interests of the Vendor hereunder shall have been assigned and/or reassigned from time to time, the term "Vendor" with respect to such rights, titles and interests shall mean the assignee or assignees for the time being thereof.

9. SUCCESSORS TO, AND ASSIGNMENTS BY, THE VENDEE. The Vendee hereby represents, warrants and agrees that its execution of this Agreement and its assumption and undertaking of the obligations, duties, and liabilities hereof, have been expressly authorized and that all the obligations then existing or to accrue to the Vendee under this Agreement, shall be assumed by any person or corporation acquiring title to or possession of the railways and properties of the Vendee, and that upon any such sale, lease, transfer, or assignment of said railways or properties, any person or corporation acquiring title thereto or possession thereof shall also, as a condition of such acquisition, be bound by all such obligations.

The Vendee hereby covenants and agrees that without the written consent of the Vendor it will not further pledge, hypothecate or in

any way encumber, or permit the encumbrance of, any part or all of the cars or assign or transfer this Agreement or any of its rights hereunder, or transfer or lease the cars or any of them.

The term "Vendee" whenever used in this Agreement means, before any assignment of the rights of the Vendee hereunder as hereinabove provided, the Vendee, its successors and assigns, and after any such assignment shall include the Vendee, its successors and assigns, and any assignee thereof, except only insofar as the Vendor may specifically, in writing, relieve the Vendee or any such assignee from the obligations hereof.

10. DEFAULTS AND REMEDIES.

In case

(a) Vendee shall make default in the payment of any installment of the unpaid purchase price of the cars herein provided for together with interest and shall remain in default for more than ten (10) days after such payment shall have become due and payable; or

(b) Vendee shall make or suffer to be made any unauthorized assignment or transfer of this Agreement or of any interest therein or of its rights or interest in any of the cars or shall make or suffer to be made any unauthorized lease thereof, or shall cause or permit any of the cars to be pledged or held for any debt or obligation owing by Vendee, or to be in any manner encumbered, or except as herein authorized shall part with the possession of the cars, or any of them, and in any such event shall fail or refuse either to cause such assignment, transfer, lease, pledge or encumbrance to be cancelled effectually as to any such assignee, transferee, lessee, pledgee or encumbrancer and all others having any interest therein or to cause any such cars to be released from such pledge or encumbrance or to recover possession of such cars within thirty (30) days after Vendor shall have demanded in writing such cancellation or release or the recovery of possession of such cars; or

(c) Vendee shall fail or refuse, for more than thirty (30) days after Vendor shall have demanded in writing the per-

formance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Vendee or to make provision satisfactory to Vendor for such compliance; or

(d) Vendee shall file any petition for reorganization or debt adjustment affecting the obligations of such Vendee hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or any voluntary assignment or transfer of such Vendee's interest in and under this Agreement; or

(e) or the creditors of the Vendee shall file any petition for reorganization or debt adjustment affecting the obligations of such Vendee hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or hereafter existing or under any other statute, or any involuntary transfer of such interest by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall within thirty (30) days from the filing or other effective date thereof be nullified, stayed or otherwise rendered ineffective, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him);

then, in any such case (in this Agreement sometimes called "events of default"), Vendor at its option may by notice in writing delivered to Vendee, and upon compliance with any mandatory requirement of law applicable to the action to be taken, declare to be due and payable forthwith the entire unpaid balance of the purchase price of the cars; and thereupon the entire amount of such unpaid purchase price shall become and shall be due and payable immediately without further demand together with interest thereon to such date of default at the rates set out in Section 2 of this Agreement, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during

such time as it shall remain overdue, at the rate of seven per cent (7%) per annum or at the prime rate plus one per cent (1%) per annum, whichever is greater, (to the extent permitted by law) and Vendor shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendor shall be applied by it as hereinafter provided.

Vendee covenants that, in case of the happening of any such event of default, Vendor by its agent, after making the declaration previously provided for in this Section, and upon such further notice as may be required for compliance with any mandatory requirement of law applicable to the action to be taken, may also take possession of all or any of the cars wherever they may be found, and for that purpose enter upon the railroads and premises operated by Vendee, and withdraw the same from said railroads and premises, retaining all payments which up to that time may have been made hereunder for the cars and otherwise, and shall be entitled to collect, receive and retain all unpaid per diem, mileage or other charges of any kind, earned by the cars or any thereof, and may lease the cars or any thereof, or, with or without retaking possession thereof (but only after making the declaration provided for in this Section), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement, free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Vendee, and with or without any other notice or advertisement, for cash or upon credit, in its discretion, and may otherwise proceed to enforce its rights in the manner provided by this Agreement.

In case Vendor shall rightfully demand possession of the cars in pursuance of this Agreement and shall reasonably designate a point or points upon the railroads or premises operated by Vendee, for delivery of the cars to it, Vendee shall, at its own expense, forthwith and in the usual manner, cause the cars to be moved to such point or points on the lines of railroad of Vendee as shall be designated by Vendor and shall there deliver the same or cause them to be delivered

to Vendor; or, at the option of Vendor, Vendor may keep the cars on any of the lines of railroad or premises of the Vendee until Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose Vendee agrees to furnish without charge for rent or storage the necessary facilities at any point or points thereon selected by Vendor reasonably convenient to Vendee. It is hereby expressly covenanted and agreed that the covenants in this Section contained are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises Vendor shall be entitled to a decree against Vendee requiring the specific performance thereof.

In the event of a sale or other disposition of the cars or any of them as herein provided, it shall not be necessary to have the cars or any of them present at such place or places where such sale or other disposition may be made. At any such sale or sales or other disposition, Vendor, to the extent not prohibited by requirements of law, may become purchaser of the cars or any of them, and in settlement for such purchase price shall be entitled to have credited on account thereof the sums when due to the Vendor from the Vendee under this Agreement.

To the extent permitted by any requirements of law, any such sale or sales may be held or conducted at such place or places and at such time or times as Vendor may specify, and without gathering at the place of sale the cars to be sold, and in general in such manner as Vendor may determine in compliance with any such requirements of law, but so that Vendee and Vendor or its assignee may and shall have reasonable opportunity to bid at such sale.

Upon such taking possession or lease or sale of the cars Vendee shall cease to have any rights or remedies in respect of the cars under this Agreement, and all such rights and remedies shall be deemed thenceforth to have been waived and surrendered by Vendee, and no payments theretofore made by Vendee for the cars or any of them shall, in case of the happening of any such event of default and such taking possession, lease or sale by Vendor, give to Vendee any legal or equitable interest or title in or to the cars or any of them or any cause or right of action at law or in equity with respect to the cars against Vendor all subject to and in compliance with any requirements of law. No such taking possession or lease or sale of the cars by Vendor shall be a bar to the recovery by Vendor from Vendee of any unpaid balance of the

purchase price of the cars, and Vendee shall be and remain liable for the same.

If in case of the happening of any such event of default Vendor shall exercise any of the powers conferred upon it by this Agreement, all payments made by Vendee to Vendor under this Agreement after such event of default, and the proceeds of any judgment collected by Vendor from Vendee hereunder, and the proceeds of every lease or sale by Vendor hereunder of any of the cars together with any other sums which may then be held by Vendor under any of the provisions of this Agreement, shall be applied by Vendor in the order of priority following, viz: (a) to the payment of all proper expenses incurred or advances made by Vendor in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the cars and all expenses of the custody and of any lease or sale thereof, and (b) to the payment of all other sums of money due and payable to Vendor under the provisions of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Vendor in respect of the cars. After all such payments shall have been made in full the title to any of the cars remaining unsold shall be conveyed by Vendor to Vendee, or otherwise as it may direct, free from any further liabilities or obligations to Vendor hereunder. If, after applying as aforesaid all such sums of money realized by Vendor there shall remain any amount due to Vendor under the provisions of this Agreement, Vendee agrees to pay the amount of such deficit to Vendor. If, after applying as aforesaid all such sums of money realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Vendee, or otherwise as it may direct in writing.

The remedies in this Agreement provided in favor of Vendor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity.

The foregoing provisions, however, are subject to the condition that if, at any time after the unpaid balance of the purchase price shall have been declared due and payable as provided in this Agreement, all arrears of installment payments with interest as hereinabove provided and the expenses of Vendor and all other sums which shall have become due and payable by Vendee under this Agreement (other than

the unpaid installments which shall not at the time have matured according to their terms) shall have been paid by or on behalf of Vendee before any lease or sale by Vendor of any of the cars, and every other default in the observance or performance of any covenant or condition of this Agreement shall have been made good or cured to the satisfaction of Vendor or provisions deemed by Vendor to be adequate shall have been made therefor, then and in every such case Vendor may waive at its option the default by reason of which the unpaid balance of the purchase price of the cars shall have been declared and become due and payable and may waive at its option the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

Neither such retaking possession nor any lease or sale of the cars by Vendor nor any action or failure or omission to act on the part of Vendor against Vendee or with respect to the cars nor any delay or indulgence granted to Vendee by Vendor shall affect the obligations of Vendee under this Agreement.

11. APPLICABLE STATE LAWS. Any provision of this Agreement prohibited by any applicable law of any state, or which by any applicable law of any state would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived they are hereby waived by the Vendee to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Vendee, to the fullest 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 the cars, or any unit thereof, and any other requirements as to the time, place and terms of sales thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

12. EXTENSION NOT A WAIVER. Any extension of time granted by the Vendor to the Vendee for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall apply to the particular instance only, and shall

not be deemed a waiver of the title of the Vendor reserved hereunder nor any of its rights and remedies hereunder or otherwise existing; and no delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right hereafter to exercise the same.

13. RECORDATION AND EXPENSES. Vendee at its own expense shall cause this Agreement and any supplement hereto, and the first and second assignment thereof, to be duly filed, recorded or filed for record in such agency of the United States of America, as may be designated by law to be proper and sufficient for the full protection of the title of the Vendor or of its assignee or assignees, and from time to time will execute any and all further instruments that reasonably shall be requested by the Vendor for such publication and protection of title; and the Vendee will promptly furnish to the Vendor certificates, or other evidences satisfactory to the Vendor, of such filing, recording or filing for record. Vendee shall pay all costs, charges and expenses (including stamps and other taxes, if any) incident to the preparation, execution, acknowledgement, delivery and recordation of this Agreement, of the first and second assignment or assignments hereof by the Vendor (other than fees and expenses of counsel of the assignee or assignees or subsequent assignee or assignees of this Agreement), and all such costs, charges and expenses in connection with any instrument supplemental hereto or amendatory hereof, and of any certificate of the payment in full of the indebtedness in respect to the purchase price of the cars due hereunder.

14. EXECUTION OF COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart.

15. POSSESSION, USE AND LOCATION. The Vendee, so long as it shall not be in default under this Agreement, shall, subject to the terms of this Agreement, be entitled to the possession and use of the cars upon the lines of railroad operated by Vendee, or lines of railroad over which Vendee has or may acquire trackage rights or right of use, and upon connecting and other railroads in the usual interchange of such cars.

16. PROHIBITION AGAINST LIENS. The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee, and/or the Vendor which, if unpaid, might become a lien or a charge upon the cars, or any thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

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

17. SECTION HEADINGS. All section, paragraph, or division headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

18. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; *provided, however*, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement, and all rights and obligations hereunder, is intended to create and shall be treated as a security interest in the cars for all sums owed by the Vendee under this Agreement as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

19. NOTICES. Any notice hereunder to the Vendee shall be deemed to be properly served if delivered or mailed to it at 908 West Broadway, Louisville, Kentucky 40201, or at such other address as may be furnished in writing to the Vendor by the Vendee. Any notice hereunder to the Vendor shall be deemed to be properly served if delivered or mailed to the Vendor in care of Corporation Service Company, Delaware Trust Building, 900 Market Street, Wilmington, Delaware 19899, or at such other address as may have been furnished in writing to the Vendee by the Vendor. Any notice hereunder to any assignee of

the Vendor or of the Vendee 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 Vendee or the Vendor, as the case may be, by such assignee.

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.

L&N INVESTMENT CORPORATION

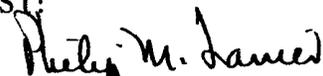
(Corporate seal)

By



Vice President

ATTEST:

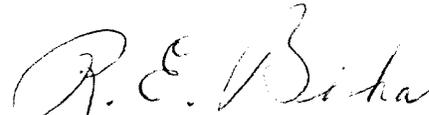


Assistant Secretary

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

(Corporate seal)

By



Vice President

ATTEST:



Assistant Secretary

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON

}

ss.:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *L. W. Adkins*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of L&N Investment Corporation, a Delaware corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of August, 1970.

Norma J. Jones
NORMA J. JONES

Notary Public
Jefferson County, Kentucky

My Commission expires March 4, 1973.

(NOTARIAL SEAL)

COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } ss.:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *R. E. Risha*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Louisville and Nashville Railroad Company, a Kentucky corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of August, 1970.

Norma J. Jones
NORMA J. JONES

Notary Public, Jefferson County,
Kentucky

My commission expires March 4, 1973.

(NOTARIAL SEAL)

with and subject to the provisions of the Conditional Sale Agreement; and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each and all the covenants and conditions of the Conditional Sale Agreement, set forth to be performed and complied with by the Seller.

The Seller covenants and agrees that, at the time of delivery of each of the cars to Buyer, each side of each such car shall be plainly, distinctly and conspicuously marked by stencilling in letters not less than one inch in height with the following words:

“Citizens Fidelity Bank and Trust Company, Agent — Owner”.

(3) The Seller and the Buyer represent and warrant that as set forth in and subject to the provisions of the Conditional Sale Agreement the Seller has legal title to the cars and good right to sell the same, and that the Agent shall have title to and a claim upon each of said cars prior and superior to the rights and claims of all persons whatsoever as security for the payment by the Buyer of the deferred purchase price of all cars; and that the obligation of the Buyer to pay the aggregate amount of the deferred purchase price of all cars accepted by it, with interest upon the balance thereof from time to time remaining unpaid, as provided in said Conditional Sale Agreement, shall be legal and binding and unconditional and subject to no defense, set-off or counterclaim whatever.

(4) The Seller and the Buyer agree that this Agreement and Assignment will not transfer to or impose upon the Agent or in any way affect or modify (a) the Seller’s obligations for reconstruction of the cars, or (b) the Buyer’s obligations to indemnify the Seller against and save and keep the Seller harmless from loss and expense resulting from patent claims, all as set forth in Section 7 of the Conditional Sale Agreement, the said indemnity obligations to be and remain enforceable against and only against the Buyer.

(5) The Seller and the Buyer will indemnify the Agent against and save and keep the Agent harmless from all expense, loss or damage incurred or sustained by the Agent by reason of any defense, set-off or counterclaim of the Buyer, based on any indebtedness or liability at any time owing to the Buyer by the Seller, in any suit or action brought by the Agent under the Conditional Sale Agreement. The Seller and

the Buyer agree to indemnify and save harmless the Agent against any and all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of any alleged infringement of patents covering the cars or any part or appliance thereof.

(6) The Seller covenants and agrees with the Agent, its successors and assigns, that, upon the request of the Agent, its successors and assigns, the Seller will execute any and all instruments which may be necessary or proper in order to discharge of record every right, estate, title, interest, claim or demand of the Seller in, to or under the Conditional Sale Agreement or any other instrument evidencing any interest of the Seller therein or in the cars therein described.

(7) The Agent covenants and agrees that upon the delivery to and acceptance by the Buyer pursuant to the Conditional Sale Agreement of each car, provided it receives

(a) an opinion of counsel for the Buyer in form acceptable to the Agent and its counsel as specified in Section 8 of the Conditional Sale Agreement;

(b) an opinion of counsel for the Seller in form acceptable to the Agent and its counsel, to the effect that the Conditional Sale Agreement and this Agreement and Assignment have each been duly executed and delivered by the Seller and each is a valid instrument binding upon the Seller enforceable against it in accordance with its terms; that the Conditional Sale Agreement and this Agreement and Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Agent in any state of the United States of America; that no consent or approval of the Interstate Commerce Commission or of any other governmental or supervisory agency, including any state regulatory agency, is required with respect to the execution and delivery of the Conditional Sale Agreement and this Agreement and Assignment or the performance of the terms thereof; that the Agent is vested with all the right, title and interest of the Seller in and to the Conditional Sale Agreement purported to be

(b) covenant and agree that they will from time to time and at all times, at the request of the Agent 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 Agent or intended so to be.

(10) This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together, shall constitute but one and the same instrument.

(11) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Agent under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Seller and the Buyer, or either of them, be deemed a waiver of any obligation of the Seller or of the Buyer to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Agent to take further action as herein provided without notice or demand, nor in any event shall any waiver or consent on the part of the Agent be effective unless in writing, and then only with respect to the specific instance for which the same is given.

(12) Each reference herein to the Agent shall in every instance, except where the context otherwise requires, be deemed to include its successors and assigns, in whose favor the provisions hereof shall likewise inure; and all provisions hereof shall be binding upon the Seller and its successors and assigns.

(13) The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Kentucky; provided, however, that the parties hereto shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act. This Agreement and Assignment, and all rights and obligations hereunder, is intended to create and to perpetuate and assign, and shall be treated as a security interest in said cars for the indebtedness of the Buyer under the Conditional Sale Agreement and

under this Agreement and Assignment as the term "security interest" is described under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky.

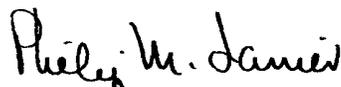
(14) Louisville and Nashville Railroad Company, as the Buyer, hereby joins in the execution of this Agreement and Assignment for the purpose of confirming all statements with respect to such obligations as are expressed as to warranties and indemnifications made by the Seller, to signify its acceptance of such obligations for itself and for the Seller, including liability, if any, of the Seller which may be incurred under Section (7) of this Agreement and Assignment, and to accept such obligations and liabilities as may be imposed upon it by any provision of this Agreement and Assignment.

IN WITNESS WHEREOF, the Seller, the Buyer, and the Agent have caused this instrument to be executed in their respective names by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be affixed, duly attested, as of the day and year first above written.

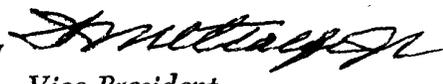
L&N INVESTMENT CORPORATION

By 
Vice-President.

(CORPORATE SEAL)

ATTEST: 
Assistant Secretary.

CITIZENS FIDELITY BANK AND TRUST
COMPANY, AGENT

By 
Vice-President.

(CORPORATE SEAL)

ATTEST: 
Assistant Secretary

LOUISVILLE AND NASHVILLE RAILROAD
COMPANY

By 
Vice-President

(CORPORATE SEAL)

ATTEST: 
Assistant Secretary

COMMONWEALTH OF KENTUCKY }
 COUNTY OF JEFFERSON } ss.:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *L. W. Adkins*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice-President of L&N Investment Corporation, a Delaware corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of August, 1970.

Norma J. Jones
 NORMA J. JONES

Notary Public, Jefferson County, Kentucky

My Commission expires March 4, 1973.

(NOTARIAL SEAL)

COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } ss.:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *J. D. Metcalfe, Jr.*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of CITIZENS FIDELITY BANK AND TRUST COMPANY, a banking corporation organized under the laws of the Commonwealth of Kentucky, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 14 day of August, 1970.

Donna Lefler

Notary Public, Jefferson County, Kentucky

My commission expires ~~Notary Public, Jefferson County, Ky.~~
~~My commission expires Jan. 10, 1973~~

(NOTARIAL SEAL)

COMMONWEALTH OF KENTUCKY }
COUNTY OF JEFFERSON } ss.:

The undersigned, a Notary Public for the Commonwealth and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said Commonwealth and County, *R.E. Bisha*, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is Vice President of Louisville and Nashville Railroad Company, a Kentucky corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this *14th* day of August, 1970.

Norma J. Jones
NORMA J. JONES

Notary Public, Jefferson County, Kentucky

My commission expires March 4, 1973.

(NOTARIAL SEAL)