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RECORDATION NO._____Filed & Recorded

APR 26 1971 -11 05 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1971

Between

ALLEN R. BRADLEY AND JOHN A. ZERBE

And

NORFOLK AND WESTERN RAILWAY COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of April 1, 1971

Between

ALLEN R. BRADLEY AND JOHN A. ZERBE

And

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, As Agent

THE STONE PRINTING & MFG. CO., ROANOKE, VA., U.S.A.

CONDITIONAL SALE AGREEMENT dated as of April 1, 1971, between the persons named in Item 1 of Schedule A hereto (hereinafter collectively called the Vendor or Manufacturer, as more particularly set forth in Article 26 hereof), and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad).

WHEREAS, the Manufacturer has agreed to arrange to have constructed, and to sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B hereto (hereinafter, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 hereof, respectively, called the Equipment);

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

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

ARTICLE 2. *Delivery.* The Manufacturer will deliver the Equipment to the Railroad, f.o.b. the Railroad's tracks, at the place or places and in accordance with the delivery schedule set forth in Schedule B hereto.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including, but not limited to, accidents due to natural causes, acts of the Railroad, acts of government (such as embargoes, priorities and allocations, war or war conditions), riot or civil commotion, sabotage, strikes, differences with workmen, fire, flood, explosion, accidents or other events resulting in damage to plant, equipment or facilities and delays in receiving necessary materials. The Manufacturer shall have no obligation to deliver any unit of the Equipment hereunder subsequent to the filing by or against the Railroad of a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, and prior to the assumption in writing of all of the obligations of the Railroad under this Agreement by a trustee or trustees appointed for the Railroad acting pursuant to a court order or decree in any proceedings under said Section 77.

The Railroad may (a) purchase hereunder from the Manufacturer, or arrange for the acquisition by the Vendor from a person or persons other than the Railroad of, other units of standard-gauge railroad equipment (other than passenger or work equipment) first put into service no earlier than April 1, 1971 (hereinafter called Additional Equipment), which Additional Equipment may be acquired in lieu of or in addition to units of the Equipment, and (b) elect to exclude from this Agreement any unit or units of the Equipment described in Schedule B hereto. In the case of either of (a) or (b) above, the Vendor and the Railroad shall execute an agreement amendatory hereof or supplemental hereto providing for the inclusion hereunder of Additional Equipment or for the exclusion of any unit or units of the Equipment from this Agreement. If the Railroad

should so elect to exclude any units of the Equipment from this Agreement for any reason other than the Manufacturer's failure to have such units constructed, and to sell and deliver the same in accordance with its obligations hereunder, the Railroad shall nevertheless be obligated to accept those units and pay the full Purchase Price (as hereinafter defined) therefor if and when those units shall be completed and delivered to it by the Manufacturer, which payment shall be made in cash by the Railroad or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine which will assure the Manufacturer of prompt payment in full for those units of the Equipment.

The Equipment shall be subject to inspection and approval prior to delivery by an inspector or other authorized representative of the Railroad, and the Manufacturer shall grant to said inspector or authorized representative reasonable access to its plant. The Manufacturer agrees to inspect materials entering into the construction of the Equipment in accordance with the standard quality control practices of the Manufacturer.

Upon the completion of construction of one or more units of the Equipment, that unit or those units shall be presented to an authorized representative of the Railroad for inspection at the place designated in Schedule B hereto for delivery. If each such unit conforms to the specifications, said authorized representative shall execute and deliver to the Manufacturer, in duplicate, a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that the unit or units of the Equipment covered thereby have been inspected, have been found to conform to the Specifications, are marked in accordance with Article 6 hereof and are accepted on behalf of the Railroad.

Upon delivery by the Manufacturer to the Railroad and acceptance by the Railroad of a unit of the Equipment hereunder, the Railroad shall assume with respect thereto the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The estimated

unit price and the estimated total price of the Equipment are set forth in Schedule B hereto. Such estimated prices are subject to such increase or decrease as may be agreed to by the Manufacturer and the Railroad. The term "Purchase Price" as used herein shall mean the estimated prices as so increased or decreased.

Units of the Equipment shall be settled for in such number of groups of such units delivered to and accepted by the Railroad as shall be determined by mutual agreement of the Railroad and the Manufacturer (each such group being hereinafter called a Group).

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor, at such place as the Vendor may designate, the Purchase Price of the Equipment as stated in the invoice or invoices therefor (hereinafter called the Invoiced Price), as follows:

(a) on any Closing Date (as hereinafter defined) with respect to a Group, the amount, if any (hereinafter called the Adjustment Payment), by which the Invoiced Price of all the units of the Equipment for which settlement has theretofore been and is then being made (hereinafter called the Aggregate Invoiced Price), exceeds the sum of the Deferred Purchase Price set forth in Item 2 of Schedule A hereto and any amount previously paid or payable with respect to the Aggregate Invoiced Price pursuant to this subparagraph (a);

(b) if applicable, upon receipt of a final statement of the aggregate Purchase Price (hereinafter called the Final Statement) setting forth any revision of the Purchase Price of the Equipment (the Purchase Price as so revised being hereinafter called the Final Purchase Price), the amount, if any, by which the Final Purchase Price of all units of the Equipment, as stated in such Final Statement therefor, shall exceed the sum of the Deferred Purchase Price and the Adjustment Payment, if any; and

(c) in 15 consecutive annual instalments (as nearly equal as practicable) payable on April 1, 1972, and on each April 1 thereafter to and including April 1, 1986, an amount

equal to the Aggregate Invoiced Price (or Final Purchase Price if an amount greater than the Aggregate Invoiced Price) of the Equipment less the amounts paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph.

If this Agreement is assigned by the Manufacturer, the obligations of the Railroad under subparagraphs (a) and (b) of this paragraph shall be unsecured obligations and the Manufacturer shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The portion of the Purchase Price of the Equipment payable under subparagraph (c) of the preceding paragraph of this Article 3 shall bear interest from the respective Closing Dates at the rate of 7¾% per annum on the portion thereof payable on or prior to April 1, 1976, and at the rate of 8¼% on the portion thereof payable after April 1, 1976. This interest will be paid by the Railroad to the Vendor, at such place as the Vendor may designate to the extent accrued, on October 1 and April 1 in each year, commencing October 1, 1971 (such dates being hereinafter called the interest payment dates).

The Final Statement, if any, shall be delivered by the Manufacturer to the Railroad as soon as practicable after the last Closing Date. In the event that the Final Purchase Price as shown by the Final Statement shall be less than the Aggregate Invoiced Price, the difference (hereinafter called the Price Decrease) shall be repaid as follows:

(a) If this Agreement shall have been assigned by the Manufacturer, the Manufacturer shall repay to its assignee the Price Decrease less any amount paid by the Railroad pursuant to subparagraph (a) of the third paragraph of this Article 3. The amount so repaid to the assignee shall be deemed to be a repayment of the last amounts paid to the Manufacturer by the assignee pursuant to the assignment. The Railroad agrees to pay to the assignee interest at the rate of 7¾% per annum on the amount so repaid to the assignee from the date that amount was paid by the assignee to the Manufacturer pursuant to the

assignment to the date of repayment; *provided, however,* that nothing herein shall be construed to require the Railroad to pay interest on any amount on which interest shall previously have been paid pursuant to the fourth paragraph of this Article 3.

(b) The balance, if any, of the Price Decrease shall be repaid to the Railroad.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, not more than 10 business days following receipt by the Railroad from the Manufacturer of the bill of sale, invoice, Certificate or Certificates of Acceptance and opinion of counsel for the Manufacturer with respect to such Group, as shall be fixed by the Railroad by notice telephoned, telegraphed or mailed to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and bank holidays in the Commonwealth of Virginia or the Commonwealth of Pennsylvania.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9¼% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

All payments provided for in this Article 3 shall be made in Federal funds. The Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or federal taxes—other than income, gross receipts (except gross receipts taxes in the

units to come under and be subject to this Agreement and to protect the Vendor's title and its rights under this Agreement with respect thereto. All such replacement units other than such units acquired from the Manufacturer shall be warranted as being free from defects in materials, workmanship or design under normal use and service; provided, however, that if any such replacement unit shall be other than a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within one year after delivery thereof to the Railroad, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective, and provided further that if any such replacement unit shall be a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within two years after delivery thereof to the Railroad or 250,000 miles in scheduled service, whichever shall first occur, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective. Whenever the Railroad shall file with the Vendor a written direction to apply any money to or toward the cost of any replacement unit or units and a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad that the cost of such replacement unit or units does not exceed the fair value thereof, the Railroad shall file with the Vendor such number of executed counterparts, as may reasonably be requested, of an opinion of counsel for the Railroad covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United

States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating of the National Credit Office, Division of Dun & Bradstreet, Inc., Standard & Poor's Corporation or any similar national credit rating agency then in existence, (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least $50,000,000, in each case maturing in not more than one year from the date of investment (such investments being herein called Investments), as may be specified in such written direction. Any Investments shall from time to time be sold and the proceeds reinvested in such other Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost thereof (including accrued interest), shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If the proceeds (plus said interest) shall be less than said cost, the Railroad will promptly pay to the Vendor an amount equal to that deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as that event of default shall continue all money then held by the Vendor pursuant to this Article 7 shall be applied by the Vendor as if it were money received upon the sale of Equipment pursuant to Article 17 hereof.

In the event that any unit of the Equipment shall to the knowledge of the Railroad be rendered permanently unfit for use due to a Casualty Occurrence after delivery by the Manu-

facturer of the unit to the Railroad and acceptance thereof on behalf of the Railroad but prior to the time that the Manufacturer shall have received the Invoiced Price for the unit from either the Railroad or any assignee of this Agreement, then the Railroad shall be obligated to pay the Purchase Price in full to the Manufacturer within 30 days of the Casualty Occurrence and that unit shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

ARTICLE 9. *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, the Department of Transportation, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that those laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment, the Railroad will comply therewith, at its expense, and will maintain the Equipment in proper condition for operation under those laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any those law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before April 30 in each year, commencing with the year 1972, the Railroad will furnish to the Vendor an accurate statement, as of the pre-

ceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default hereunder, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it or by any Affiliate or over which it or any Affiliate has trackage rights and upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time be afforded but only upon and subject to all the terms and conditions of this Agreement, and upon the further condition that if the Equipment is to be used upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the Vendor in the Equipment in that jurisdiction and furnish to the Vendor an opinion of counsel practicing in that jurisdiction that this Agreement and any instrument of assignment pursuant to which rights hereunder may be assigned are valid instruments enforceable against the parties hereto and thereto in that jurisdiction in accordance with their terms and that any filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the

Vendor in the Equipment in that jurisdiction has been effected, specifying said filing, recording or deposit (or similar action) so effected. The Railroad, without the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any Affiliate. The rights of any Affiliate under such an agreement shall be expressly subordinated to the rights of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through, under or against the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any unit or units of the Equipment, 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, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

Except for permitted liens, the Railroad shall not permit any liens to attach to any unit of the Equipment from and after the delivery of that unit to the Railroad hereunder.

ARTICLE 13. *Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out

ARTICLE 26. *Definitions.* The term "Vendor," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the persons named in Item 1 of Schedule A hereto and the survivor of them and any successor or successors for the time being to their rights, powers, duties and obligations, under the Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, between said persons and the Railroad, and, after any assignment, (a) any assignee for the time being of particular assigned rights as regards such rights, (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom any assignee is acting as agent, and (c) any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations under said Agreement for Construction of Railroad Equipment.

ARTICLE 27. *Execution.* This Agreement, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. 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.

units to come under and be subject to this Agreement and to protect the Vendor's title and its rights under this Agreement with respect thereto. All such replacement units other than such units acquired from the Manufacturer shall be warranted as being free from defects in materials, workmanship or design under normal use and service; provided, however, that if any such replacement unit shall be other than a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within one year after delivery thereof to the Railroad, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective, and provided further that if any such replacement unit shall be a locomotive such warranty may be limited to making good at the plant of the manufacturer of such unit any part or parts of such unit which shall, within two years after delivery thereof to the Railroad or 250,000 miles in scheduled service, whichever shall first occur, be returned to such manufacturer with transportation charges prepaid and which the examination of such manufacturer shall disclose to its satisfaction to have been thus defective. Whenever the Railroad shall file with the Vendor a written direction to apply any money to or toward the cost of any replacement unit or units and a certificate of any Vice President, the Assistant Vice President—Finance or the Treasurer of the Railroad that the cost of such replacement unit or units does not exceed the fair value thereof, the Railroad shall file with the Vendor such number of executed counterparts, as may reasonably be requested, of an opinion of counsel for the Railroad covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 16 hereof shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 7 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such (i) direct obligations of the United

States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper having the highest rating of the National Credit Office, Division of Dun & Bradstreet, Inc., Standard & Poor's Corporation or any similar national credit rating agency then in existence, (iii) certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least $50,000,000, in each case maturing in not more than one year from the date of investment (such investments being herein called Investments), as may be specified in such written direction. Any Investments shall from time to time be sold and the proceeds reinvested in such other Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost thereof (including accrued interest), shall be held by the Vendor for application pursuant to this Article 7, and any excess shall be paid to the Railroad. If the proceeds (plus said interest) shall be less than said cost, the Railroad will promptly pay to the Vendor an amount equal to that deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If any of the events of default specified in Article 16 hereof shall have occurred and be continuing, then so long as that event of default shall continue all money then held by the Vendor pursuant to this Article 7 shall be applied by the Vendor as if it were money received upon the sale of Equipment pursuant to Article 17 hereof.

In the event that any unit of the Equipment shall to the knowledge of the Railroad be rendered permanently unfit for use due to a Casualty Occurrence after delivery by the Manu-

facturer of the unit to the Railroad and acceptance thereof on behalf of the Railroad but prior to the time that the Manufacturer shall have received the Invoiced Price for the unit from either the Railroad or any assignee of this Agreement, then the Railroad shall be obligated to pay the Purchase Price in full to the Manufacturer within 30 days of the Casualty Occurrence and that unit shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement.

ARTICLE 8. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

ARTICLE 9. *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, the Department of Transportation, and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that those laws and rules affect the operation or use of the Equipment. In the event that such laws or rules require the alteration of the Equipment, the Railroad will comply therewith, at its expense, and will maintain the Equipment in proper condition for operation under those laws and rules; provided, however, that the Railroad may, in good faith, contest the validity or application of any those law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before April 30 in each year, commencing with the year 1972, the Railroad will furnish to the Vendor an accurate statement, as of the pre-

ceding December 31, (a) showing the amount, description and numbers of all units of the Equipment then covered hereby, (b) showing the amount, description and numbers of any units of the Equipment that have suffered a Casualty Occurrence, whether by accident or otherwise, during the preceding 12 months (or since the date of delivery hereunder of the Equipment, in the case of the first such statement) and (c) stating that, in the case of any units of the Equipment repaired or repainted during the period covered by such statement, the markings required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto once in every year.

ARTICLE 11. *Possession and Use.* The Railroad, so long as it shall not be in default hereunder, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it or by any Affiliate or over which it or any Affiliate has trackage rights and upon connecting and other railroads in the usual interchange of traffic and upon connecting and other railroads over which through service may from time to time be afforded but only upon and subject to all the terms and conditions of this Agreement, and upon the further condition that if the Equipment is to be used upon lines of railroad in any jurisdiction outside the United States of America, the Railroad shall prior to such use, to the satisfaction of the Vendor, arrange for the filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the Vendor in the Equipment in that jurisdiction and furnish to the Vendor an opinion of counsel practicing in that jurisdiction that this Agreement and any instrument of assignment pursuant to which rights hereunder may be assigned are valid instruments enforceable against the parties hereto and thereto in that jurisdiction in accordance with their terms and that any filing, recording or deposit (or any similar action) of all instruments required or advisable to protect the security interest of the

Vendor in the Equipment in that jurisdiction has been effected, specifying said filing, recording or deposit (or similar action) so effected. The Railroad, without the prior written consent of the Vendor, may, under an appropriate agreement, grant the right to possession of the Equipment and the use thereof to any Affiliate. The rights of any Affiliate under such an agreement shall be expressly subordinated to the rights of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through, under or against the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon any unit or units of the Equipment, 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, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent (such liens being herein called permitted liens).

Except for permitted liens, the Railroad shall not permit any liens to attach to any unit of the Equipment from and after the delivery of that unit to the Railroad hereunder.

ARTICLE 13. *Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out

ARTICLE 26. *Definitions.* The term "Vendor," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the persons named in Item 1 of Schedule A hereto and the survivor of them and any successor or successors for the time being to their rights, powers, duties and obligations, under the Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, between said persons and the Railroad, and, after any assignment, (a) any assignee for the time being of particular assigned rights as regards such rights, (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom any assignee is acting as agent, and (c) any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations under said Agreement for Construction of Railroad Equipment.

ARTICLE 27. *Execution.* This Agreement, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. 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, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

Allen R. Bradley (L. S.)
Allen R. Bradley

John A. Zerbe (L. S.)
John A. Zerbe

Norfolk and Western Railway Company

By
Assistant Vice President—Finance

Attest:
Secretary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } ss.:

On this 7th day of April, 1971, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE } ss.:

On this 7th day of April, 1971, before me personally appeared C. B. Deibel, to me personally known, who being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that the seal 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 by him on this date was the free act and deed of said corporation.

Notary Public

My Commission Expires April 21, [illegible]

SCHEDULE A—ALLEN R. BRADLEY AND JOHN A. ZERBE

Item 1: Allen R. Bradley and John A. Zerbe, who, as Owners, are parties with the Railroad, as Builder, to an Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for said Owners and as their property, the railroad equipment described in Schedule B hereto.

Item 2: Deferred Purchase Price: $5,270,000.

Item 3: Allen R. Bradley, 1323 Bradford Road, Oreland, Pennsylvania 19075, and John A. Zerbe, 247 Buckboard Road, Willow Grove, Pennsylvania 19090.

Item 4: The Conditional Sale Agreements dated as of April 1, 1971, between the Railroad and ACF Industries, Incorporated, General Electric Company, and General Motors Corporation (Electro-Motive Division), respectively.

(d) any proceedings shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the indebtedness payable hereunder), and 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 or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such appointment, if any, or 90 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad, without the prior written consent of the Vendor, shall make or suffer any sale, assignment, transfer or other disposition of (i) any of its rights under this Agreement, other than to a railroad company (including a successor corporation by consolidation or merger) which shall acquire all or substantially all of the property of the Railroad and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform all of the obligations of the Railroad under this Agreement or (ii) the right of possession and use of any unit of the Equipment other than to an Affiliate; or

(f) An event of default shall occur and be continuing under the Agreements listed in Item 4 of Schedule A hereto.

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such an action by the Vendor, declare the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of that declaration at the rate of 9¼% per annum, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in

respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect that judgment out of any property of the Railroad wherever situated.

The Vendor may waive any event of default and its consequences and rescind and annul any declaration hereunder by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no event of default had occurred and no declaration had been made. Notwithstanding the immediately preceding sentence it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no waiver, rescission or annulment of an event of default shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless the declaration has been rescinded and annulled as provided in Article 16 hereof), the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the Equipment from possession and use of the Railroad or any other person and for this purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with this removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad, with or without process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless that declaration has been rescinded and annulled as provided in Article 16 hereof), the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to said sale and prior to the making of a contract for such a sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in that event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such a sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such a sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof.

If the sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of the deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay the deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad, unless the Vendor shall have received written notification of demand for the satisfaction of indebtedness secured by any subordinate security interest in the Equipment before the surplus shall have been paid to the Railroad.

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

The foregoing provisions of this Article 17 are subject to all mandatory legal requirements in force at the time and applicable thereto.

ARTICLE 18. *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 that 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 Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be an agreement of conditional sale and enforced as such.

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

ARTICLE 19. *Extension not a Waiver.* No delay or omission in the exercise of any power or remedy provided herein or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise that power or remedy. Any extension

of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 20. *Recording.* The Railroad will cause this Agreement, the first assignment hereof (a counterpart of which is attached hereto) and any amendments or supplements hereto and thereto to be filed and recorded with the Interstate Commerce Commission, and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidences of all filing and recording hereunder and an opinion of counsel for the Railroad with respect thereto, satisfactory to the Vendor.

ARTICLE 21. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Manufacturer) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in the first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in the first assignment. For the purposes of this Article 21, if the first assignee is an agent, then any successor agent to that agent shall also be considered the first assignee.

ARTICLE 22. *Notice.* Any notice hereunder to a party designated below shall be deemed to be properly served if delivered or mailed to that party at its address below:

(a) to the Railroad, at 8 North Jefferson Street, Roanoke, Virginia 24011;

(b) to the Manufacturer, at the address specified in Item 3 of Schedule A hereto;

(c) to any assignee of the Vendor, at such address as may have been furnished in writing to the Railroad by that assignee;

or at such other address as may have been furnished in writing by any party to the other appropriate party or parties designated above.

ARTICLE 23. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 24. *Effect and Modification of Agreement.* This Agreement, including the schedules relating hereto, exclusively and completely states the rights and obligations of the Vendor 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 duly executed on behalf of the Vendor and the Railroad.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited. The Railroad warrants that its chief place of business is in the Commonwealth of Virginia.

ARTICLE 26. *Definitions.* The term "Vendor," whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the persons named in Item 1 of Schedule A hereto and the survivor of them and any successor or successors for the time being to their rights, powers, duties and obligations, under the Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, between said persons and the Railroad, and, after any assignment, (a) any assignee for the time being of particular assigned rights as regards such rights, (b) for the purposes of the indemnifications provided in Articles 4, 13 and 14 hereof, any persons for whom any assignee is acting as agent, and (c) any assignor as regards any rights hereunder that are retained or excluded from any assignment. The term "Manufacturer," whenever used in this Agreement, means, both before and after any assignment, the persons named in Item 1 of Schedule A hereto and any successor or successors for the time being to their rights, powers, duties and obligations under said Agreement for Construction of Railroad Equipment.

ARTICLE 27. *Execution.* This Agreement, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. 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, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Railroad has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

Allen R. Bradley (L. S.)
Allen R. Bradley

John A. Zerbe (L. S.)
John A. Zerbe

Norfolk and Western Railway Company

By
Assistant Vice President—Finance

Attest:
Secretary

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF PHILADELPHIA } ss.:

On this 7th day of April, 1971, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

COMMONWEALTH OF VIRGINIA
CITY OF ROANOKE } ss.:

On this 7th day of April, 1971, before me personally appeared C. B. Deibel, to me personally known, who being by me duly sworn, says that he is Assistant Vice President—Finance of Norfolk and Western Railway Company, that the seal 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 by him on this date was the free act and deed of said corporation.

Notary Public

My Commission Expires April 21, [illegible]

SCHEDULE A—ALLEN R. BRADLEY AND JOHN A. ZERBE

Item 1: Allen R. Bradley and John A. Zerbe, who, as Owners, are parties with the Railroad, as Builder, to an Agreement for Construction of Railroad Equipment dated as of November 27, 1962, as amended, whereby the Railroad, as an independent contractor, has agreed to construct and complete, for said Owners and as their property, the railroad equipment described in Schedule B hereto.

Item 2: Deferred Purchase Price: $5,270,000.

Item 3: Allen R. Bradley, 1323 Bradford Road, Oreland, Pennsylvania 19075, and John A. Zerbe, 247 Buckboard Road, Willow Grove, Pennsylvania 19090.

Item 4: The Conditional Sale Agreements dated as of April 1, 1971, between the Railroad and ACF Industries, Incorporated, General Electric Company, and General Motors Corporation (Electro-Motive Division), respectively.

SCHEDULE B—MESSRS. ALLEN R. BRADLEY AND JOHN A. ZERBE

Type	Specifications	AAR Symbol	Manufacturer's Plant	Quantity	Railroad's Road Numbers (both inclusive)	Estimated Unit Price	Estimated Total Price	Delivery
100-ton open-top hopper cars with 3,420 cubic foot capacity and roller bearings—(Group 4)	Railroad's General Arrangement Drawing No. J-50962	HT	N&W Shops at Roanoke, Virginia	443	~~119000-119442~~ 119557-119999	$12,250	$5,426,750	At Roanoke, Virginia in May through July, 1971.

CBD

AGREEMENT AND ASSIGNMENT dated as of April 1, 1971 (hereinafter called this Assignment), between Allen R. Bradley and John A. Zerbe (hereinafter collectively called the Manufacturer) and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, a Pennsylvania corporation (hereinafter called the Agent), acting as agent for the investors (hereinafter called the Investors) whose names appear in Schedule A to an Agency Agreement dated as of April 1, 1971 (hereinafter called the Agency Agreement), a copy of which has been delivered to the Manufacturer.

The Manufacturer and Norfolk and Western Railway Company, a Virginia corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of April 1, 1971 (hereinafter called the Conditional Sale Agreement), providing for the construction of the railroad equipment described in Schedule B to the Conditional Sale Agreement and for the sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of such railroad equipment (such railroad equipment, together with additional and/or substitution equipment and replacement equipment acquired pursuant to the third paragraph of Article 2 and Article 7 of the Conditional Sale Agreement, respectively, being hereinafter called the Equipment).

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth and the sum of $1 paid by the Agent to the Manufacturer, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

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

(a) All the right, title and interest of the Manufacturer in and to each unit of the Equipment when and as severally delivered and accepted and upon payment by the Agent to the Manufacturer of the amounts required to be paid

under Section 5 hereof on the Closing Date (as defined in the Conditional Sale Agreement) with respect thereto;

(b) All the right, title and interest of the Manufacturer in and to the Conditional Sale Agreement (except the right to have the Equipment constructed and to deliver the same, the right to receive the payments specified in the third paragraph of Article 2 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 3 thereof, in the last paragraph of Article 7 thereof and in the last paragraph of Article 15 thereof and reimbursement for taxes paid or incurred by the Manufacturer as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Manufacturer under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) 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) Except as limited above in subparagraph (b) hereof, all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Manufacturer 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 Agent to, or transfer, or pass, or in any way affect or modify, the obligations of the Manufacturer to have the Equipment constructed and to deliver the same in accordance with Articles 1 and 2 of the Conditional Sale Agreement or relieve the Railroad from its obligations to the Manufacturer under Articles 2, 4, 7, 13, 14 and 15, and under subparagraphs (a) and (b) of the third paragraph of Article 3, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations

of the Manufacturer to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby authorizes and empowers the Agent in the Agent's own name, or in the name of the Agent's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all funds, securities and other property to which the Agent 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 not at the expense of the Manufacturer.

If the Agent fails to pay the Manufacturer the amounts required to be paid with respect to each unit of the Equipment pursuant to Section 5 hereof at the time therein specified, then any right, title and interest in and to each unit, including any right, title and interest under the Conditional Sale Agreement with respect to each unit which has been assigned, transferred or set over to the Agent by the Manufacturer, shall automatically, and without further action on the part of the Agent, be reassigned, transferred and set over back to the Manufacturer by the Agent.

SECTION 2. The Manufacturer covenants and agrees that it will arrange to have the Equipment constructed and delivered 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 Manufacturer. The Manufacturer further covenants and agrees that it will warrant to the Agent and the Railroad that at the

time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement, it had legal title to, and good and lawful right to sell, each unit thereof and that title to each unit thereof was free of all claims, liens and encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement; and the Manufacturer further covenants and agrees that it will defend the title to each unit against the demands of all persons whomsoever based on claims originating prior to the delivery of that unit by the Manufacturer to the Railroad; all subject, however to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Manufacturer will not deliver any unit of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 20 of the Conditional Sale Agreement have been effected.

The Manufacturer covenants and agrees with the Agent that in any suit, proceeding or action brought by the Agent under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Manufacturer will indemnify, protect and hold harmless the Agent 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 Manufacturer of any obligation with respect to the Equipment or the delivery thereof, or by reason of any defense, seoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and shall not be enforceable against the Agent or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

The foregoing indemnification provisions are conditioned upon (a) the Agent's giving notice to the Manufacturer of any suit, proceeding or action by the Agent herein described, and promptly moving or taking other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad therein, and (b), if the court or other body having jurisdiction in such a suit, proceeding or action denies said motion or other action and accepts the defense, setoff, counterclaim or recoupment as a triable issue in said suit, proceeding or action, the Agent's promptly notifying the Manufacturer of the defense, setoff, counterclaim or recoupment asserted by the Railroad and giving the Manufacturer the right, at the Manufacturer's expense, to compromise, settle or defend against the defense, setoff, counterclaim or recoupment.

SECTION 3. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each unit of the Equipment, prior to the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

SECTION 4. Upon request of the Agent, its successors and assigns, the Manufacturer 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 Manufacturer therein or in the Equipment.

SECTION 5. Subject to the condition contained in the fifth paragraph of this Section 5, if the Agent shall at any time receive from the Railroad in respect of the Conditional Sale Agreement a copy of a Final Statement (as defined in sub-

paragraph (b) of the third paragraph of Article 3 of the Conditional Sale Agreement) showing that the Final Purchase Price (as defined in said subparagraph (b)) of all Groups of units of the Equipment delivered under the Conditional Sale Agreement exceeds the Aggregate Invoiced Price (as defined in subparagraph (a) of said third paragraph) of such units of the Equipment but is less than the Deferred Purchase Price (as defined in said subparagraph (a)) of all units of the Equipment, the Agent forthwith shall pay to the Manufacturer the amount of the excess.

The Agent shall, subject to the condition contained in the fifth paragraph of this Section 5, pay to the Manufacturer, on each Closing Date fixed as provided in said Article 3 occurring on or before April 1, 1972, with respect to a Group of units of the Equipment, that portion of the Invoiced Price (as defined in said Article 3) of the Group payable by the Railroad to the Manufacturer pursuant to subparagraph (c) of the third paragraph of said Article 3, provided that on or before that Closing Date there shall have been delivered to the Agent, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of sale from the Manufacturer to the Agent, transferring to the Agent, for the benefit of the Investors, title to the units of the Equipment in said Group and warranting to the Agent and to the Railroad that, at the time of delivery of said units to the Railroad under the Conditional Sale Agreement the Manufacturer had legal title to, and good and lawful right to sell, said units and that title to said units was free of all claims, liens or encumbrances of any nature except only as are contemplated in the Conditional Sale Agreement;

(b) Certificate of acceptance signed by an authorized representative of the Railroad stating that the units of the Equipment in said Group have been delivered to the

Railroad and inspected and accepted on behalf of the Railroad, and further stating that there was plainly, distinctly, permanently and conspicuously marked in stencil on both sides of each of such units at the time of its acceptance, in letters not less than one inch in height, the following legend:

OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER INTERSTATE COMMERCE ACT, SECTION 20c.

(c) Invoice of the Manufacturer for the units of the Equipment in said Group, with a certification by the Railroad endorsed thereon as to the correctness of the price of said units as set forth in said invoice;

(d) Opinion of Messrs. Kelley Drye Warren Clark Carr & Ellis, who are acting as special counsel for the Agent and for the Investors, dated as of the Closing Date, stating that (i) the Agency Agreement has been duly authorized, executed and delivered by, and is a legal, valid and binding instrument of, each of the parties thereto and is enforceable in accordance with its terms, (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Railroad and duly executed and delivered by the Manufacturer, and are legal, valid and binding instruments of, the respective parties thereto and hereto and are enforceable in accordance with their terms, (iii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (iv) title to the units of the Equipment in said Group is validly vested in the Agent and the units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in Conditional Sale Agreement, (v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Conditional Sale Agreement or this Assignment, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission and no other filing or recordation is necessary for the

protection of the rights of the Agent in the United States of America, and the Conditional Sale Agreement and this Assignment have been deposited with the Registrar General of Canada (with provision being made for publication of notice of such deposit) and filed with the Department of Financial and Commercial Affairs, Companies Branch, of Ontario, Canada and that no other filing or recordation is necessary for the protection of the rights of the Agent in Canada, and (vii) registration of the Conditional Sale Agreement or this Assignment, or of interests acquired therein or herein, or of the Certificates of Interest (as defined in the Agency Agreement), under the circumstances contemplated by this agreement, is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended;

(e) Opinion of counsel for the Railroad to the effect set forth in clauses (iv), (v) and (vi) of subparagraph (d) of this paragraph, and stating that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of the Commonwealth of Virginia (the state of its 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 on behalf of the Railroad and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the execution and delivery of the Agency Agreement and the Conditional Sale Agreement, and the consummation and fulfillment of the transactions contemplated therein, will not conflict with, result in a breach of, or constitute a default under, the Charter and Bylaws of the Railroad, any action of the Board of Directors of the Railroad authorized under said Charter and Bylaws, any of the terms, conditions or provisions of any law, regulation, order, writ, injunction, decree of any court or other governmental instrumentality or of any agreement or instrument to which the Railroad is now a party and (iv) this Assignment has been duly executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery by the Agent, is a legal, valid and binding instrument enforceable in accordance with its terms; and

(f) Opinion of counsel for the Manufacturer stating that (i) the Conditional Sale Agreement and this Assignment have been duly executed and delivered by the Manufacturer and, assuming due authorization, execution and delivery thereof by the Railroad and the Agent, respectively, are legal, valid and binding instruments enforceable in accordance with their terms, (ii) the Agent is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, and (iii) title to the units of the Equipment in said Group is validly vested in the Agent and said units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only as are contemplated in the Conditional Sale Agreement.

Any opinion delivered hereunder on or after the first Date of Deposit (as defined in the Agency Agreement) may state that counsel signing such opinion reaffirms any statement contained in any opinion of the same counsel theretofore delivered hereunder without repeating the substance of such earlier opinion. In giving the opinions specified in subparagraphs (d), (e) and (f) of the second paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (a) as to the due authorization and execution of the Agency Agreement referred to in clause (i) of said subparagraph (d) upon the representation of each of the parties to the Agency Agreement contained in Section 5 of Article 4 thereof, (b) as to any matter governed by the law of any jurisdiction other than New York or the United States of America, upon the opinion of counsel for the Manufacturer or counsel for the Railroad or other counsel satisfactory to Special Counsel as to that matter; provided, however, that

Special Counsel shall state in such an opinion that they believe that they, the Agent and the Investors are justified in so relying.

The obligation of the Agent hereunder to make any payment to the Manufacturer as hereinabove provided is hereby expressly conditioned upon the prior deposit by the Investors with the Agent, pursuant to the Agency Agreement, of sufficient funds to enable the Agent to make that payment; provided, however, in the event of the failure of any Investor to make timely deposit with the Agent in full of the funds required to be deposited by it under the Agency Agreement, the Manufacturer shall be entitled to look only to the Railroad for the payment which would have been made from any Investors' funds not so deposited.

The Agent shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement.

It is understood and agreed that the Agent shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 2 or 7 thereof.

SECTION 6. The Agent 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 Agent hereunder.

SECTION 7. The Manufacturer hereby:

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

was duly executed and delivered by the Manufacturer for a valid consideration, that it is a valid and existing agreement binding upon the Manufacturer 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 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.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Virginia; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement and this Assignment shall be filed, recorded or deposited.

SECTION 9. This Assignment, which is dated for convenience as of April 1, 1971, may be executed in any number of counterparts, each of which shall be deemed to be an original, and such counterparts together shall constitute a single instrument. 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. The Agent will deliver one of such counterparts to the Railroad.

In Witness Whereof, Allen R. Bradley and John A. Zerbe have hereunto set their hands and seals, and the Agent has caused this instrument to be signed and acknowledged by its proper officer and its corporate seal to be hereunto affixed and duly attested, as of the day and year first above written.

(L. S.)
Allen R. Bradley

(L. S.)
John A. Zerbe

The First Pennsylvania Banking and Trust Company, as Agent

By
Vice President

Attest:

Assistant Secretary

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 20th day of April, 1971, before me personally appeared Allen R. Bradley and John A. Zerbe, to me known to be the persons described in and who executed the foregoing instrument on this date, and they acknowledged the same as their free act and deed.

Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co
My Commission Expires January 28, 1974

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } ss.:

On this 20th day of April, 1971, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of The First Pennsylvania Banking and Trust Company, that the seal affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument by him on this date was the free act and deed of said association.

Notary Public

JUDITH Z. POTE
Notary Public, Philadelphia, Philadelphia Co.
My Commission Expires January 28, 1974

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Norfolk and Western Railway Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of April 1, 1971.

NORFOLK AND WESTERN RAILWAY COMPANY

By _____

Assistant Vice President—Finance