

**THE WESTERN PACIFIC RAILROAD COMPANY**

WESTERN PACIFIC BUILDING, 526 MISSION STREET  
SAN FRANCISCO, CALIFORNIA 94105

TELEPHONE: (415) 982-2100 9-319A097

WALTER G. TREANOR  
SR. VICE PRESIDENT-LAW

No. **NOV 15 1979**  
Date.....  
Fee \$ **50.00**

KATHERINE M. GRIFFIN  
GENERAL ATTORNEY  
EUGENE J. TOLER  
ANTHONY CHING  
ATTORNEYS

File: 6116-75 **ICC Washington, D.C.**

The Honorable Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

**11058**  
RECORDATION NO. .... Filed 1425

**NOV 15 1979 - 2 05 PM**

**INTERSTATE COMMERCE COMMISSION**

Dear Secretary Mergenovich:

Enclosed for filing with and recording by the Interstate Commerce Commission are five (5) original counterparts of a Conditional Sale Agreement dated as of October 1, 1979, between Whitehead & Kales Company, 58 Haltiner, River Rouge, Michigan 48218, Seller, and The Western Pacific Railroad Company, 526 Mission Street, San Francisco, CA 94105, Buyer, and of an Agreement and Assignment dated October 1, 1979, between Whitehead & Kales Company, Assignor, and Continental Illinois National Bank and Trust Company of Chicago, 231 South LaSalle Street, Chicago, IL 60693, Assignee, covering the following railroad equipment:

- 22 bi-level auto racks, Railroad's Road Numbers WP B531 to B552, inclusive. Identifying marks: Ownership Subject to a Security Agreement Filed with The Interstate Commerce Commission.

Also enclosed is this Company's voucher in the sum of \$50.00 payable to the Interstate Commerce Commission being the prescribed fee for filing and recording the foregoing document.

Please return three (3) of the enclosed counterparts with recordation data stamped thereon to the delivering messenger who will be delivering this letter on our behalf.

Very truly yours,



Katherine M. Griffin

Enc.

KMG:dla

*Joe J. K. Co*  
*Clara [unclear]*

Interstate Commerce Commission  
Washington, D.C. 20423

11/15/79

OFFICE OF THE SECRETARY

Katherine M. Griffin  
The Western Pacific RR.Co.  
Western Pacific Building  
526 Mission Street  
San Francisco, Calif. 94105

Dear Sir:

The enclosed document (s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/15/79 at 2:05pm , and assigned re-  
recording number (s). 11058

Sincerely yours,

  
Agatha L. Mergenovich  
Secretary

Enclosure (s)

11058

RECORDATION NO. .... Filed 1425

NOV 15 1979 -2 05 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of  
October 1, 1979

---

Between

WHITEHEAD & KALES COMPANY, Seller

And

THE WESTERN PACIFIC RAILROAD COMPANY, Buyer

---

For the Purchase of  
22 Bi-Level Auto Racks

---

AGREEMENT AND ASSIGNMENT

Dated as of  
October 1, 1979

---

Between

WHITEHEAD & KALES COMPANY, Assignor

And

CONTINENTAL ILLINOIS NATIONAL BANK AND  
TRUST COMPANY OF CHICAGO, Assignee

CONDITIONAL SALE AGREEMENT dated as of October 1, 1979, between WHITEHEAD & KALES COMPANY, a Michigan corporation (hereinafter called the Seller or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and THE WESTERN PACIFIC RAILROAD COMPANY, a Delaware corporation (hereinafter called the Railroad).

WHEREAS, the Seller has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the Equipment);

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

ARTICLE 1. Assignment; Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, WHITEHEAD & KALES COMPANY and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Seller", whenever used in this Agreement, means, both before and after any such assignment, WHITEHEAD & KALES COMPANY, and any successor or successors for the time being to its manufacturing properties and businesses.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Seller will construct, sell and deliver to the Railroad, and the Railroad will purchase from the Seller and accept delivery of and pay for (as hereinafter provided), all of the Equipment. Each unit of the Equipment shall conform to any specifications applicable thereto, including such modifications thereof as may be agreed upon in writing between the Seller and the Railroad (which specifications, with such modifications, if any, are hereinafter called the Specifications).

ARTICLE 3. Delivery. Seller will deliver the units of Equipment to the Railroad at Seller's plant.

Upon delivery of each unit or of a number of units of the Equipment, if each such unit conforms to the specifications, requirements and standards, if any, applicable thereto, an authorized representative of the Railroad shall execute and deliver to the Seller a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk

of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule A hereto, and shall be subject to such increase or decrease as is agreed to by the Seller and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices of the Equipment as so increased or decreased, as set forth in the Seller's invoice or invoices delivered to the Railroad.

For the purpose of settlement therefor, the Equipment shall be divided into such number of groups of units (each such group being hereinafter called a Group) as the Seller and the Railroad may agree to. The term "Closing Date" with respect to any Group shall mean such date not later than ten business days following presentation by the Seller to the Railroad of an invoice for the Purchase Price of such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least two business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, in 16 consecutive equal (except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 16, result

in an amount ending in an integral cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Purchase Prices for all the Equipment (the aggregate of said installments being hereinafter called the Conditional Sale Indebtedness).

The installments of the Conditional Sale Indebtedness shall be payable semi-annually on the last day of each June and December in each year commencing on June 30, 1980 to and including December 31, 1988. The unpaid Conditional Sale Indebtedness shall bear interest, from the Closing Date for each Group until December 31, 1988 at the rate of 11% per annum, payable on the Conditional Sale Indebtedness installment dates provided above. If any date for payment of principal or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day.

All interest under this Agreement shall be calculated on an actual elapsed day basis for a 365 or 366 day year.

The Railroad will pay to the extent legally enforceable interest at a rate per annum equal to the Prime Rate, hereinafter defined, plus 2%, (the "Penalty Rate") upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding. Prime Rate shall mean the rate per annum from time to time charged by Continental Illinois National Bank and Trust Company of Chicago for 90-day unsecured loans at Chicago, Illinois to large corporate borrowers of the highest credit standing; and each change in the Penalty Rate shall take effect on the effective date of the change in the Prime Rate.

The Railroad shall have the privilege of prepaying the Conditional Sale Indebtedness or any installment thereof, at any time, provided, however, that any such prepayment shall be accompanied by a fee equal

to 5% of the amount so prepaid during the period commencing with the date hereof and ending December 31, 1980, 4% of the amount so prepaid during the calendar year beginning January 1, 1981, 3% of the amount so prepaid during the calendar year beginning January 1, 1982, 2% of the amount so prepaid during the calendar year beginning January 1, 1983 and 1% of the amount so prepaid during the calendar year beginning January 1, 1984. Thereafter, prepayments may be made at any time without premium. Any such prepayment shall be applied to reduce installments in the inverse order of maturity thereof. The Railroad shall pay simultaneously with any prepayment pursuant to this paragraph all unpaid interest, if any, on the amount then to be prepaid, but only to the extent accrued to the date of prepayment.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts.

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

ARTICLE 5. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties here-

after levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its interest therein (except as provided above) and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad and the Seller shall have made all their payments and shall have kept and performed all their agreements and obligations under this Agreement, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except additions that are not required by Article 9 hereof and that are readily removable without causing material damage to the unit) and any and all replacements of the Equipment and of parts thereof and additions thereto (except as provided above) shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's and the Seller's obligations herein contained shall have been performed by the Railroad and the Seller, respectively, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred

to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Agreement Filed under the Interstate Commerce Act," or the name of the Vendor followed by the word "Owner", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the

same until such markings have been placed thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Railroad, shall no longer be economically useful to the Railroad, or shall be irreparably damaged or otherwise rendered unsuitable or unfit for use from any cause whatsoever, or shall be requisitioned or taken by any governmental authority under the power of eminent domain or otherwise for a stated period which exceeds the remaining term of this Agreement (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). The Railroad shall, on the next date for the payment of an installment of Conditional

Sale Indebtedness or interest hereunder occurring more than 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value (as defined herein) of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but not less than 10 days prior to the due date of the next installment of Conditional Sale Indebtedness, in whole or in part, to prepay installments of Conditional Sale Indebtedness or toward the cost of a unit or units of equipment of the same type as the Equipment (other than passenger or work equipment of types other than locomotives) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad dealing with the matters set forth in subparagraph (1) of the fifth paragraph of this Article 8. In case any money is applied pursuant to this Article 8 to prepay indebtedness, it shall be so applied to reduce installments of Conditional Sale Indebtedness thereafter falling due in the inverse order of maturity.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be

subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

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

(1) a certificate of an officer of the Railroad certifying that such replacement unit is equipment of the same type as the Equipment or is standard-gauge railroad rolling-stock (other than work or passenger equipment of types other than locomotives) and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and (2) an opinion of counsel for the Railroad that the Vendor has a valid and perfected security title in such replacement unit, free and clear from all claims, liens, security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by, domestic commercial banks in the United States of America having capital and surplus in excess of \$50,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly

pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

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

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to such portion of the Casualty Value of such equipment for which payment shall not have been waived by the Vendor as hereinabove provided, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained, with independent insurance carriers or by self-insurance, insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in

amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. Maintenance; Compliance with Laws and Rules. 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.

During the term of this Agreement the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the equipment, and in the event that such laws and rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before August 1 in each year, commencing in 1980, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding June 30 the amount, description and numbers of all units of the Equipment that

have been withdrawn from use pending repairs (other than running repairs) (such units being hereinafter called the Bad Order Units) or that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (b) setting forth the amount, description and numbers of any Bad Order Units that have been repaired and that are in use on the date of such statement, and (c) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof; provided, however, that such possession and use of rolling stock units of equipment shall be upon the lines of railroad owned or operated by the Railroad either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the

Seller to the Railroad, but only upon and subject to all the terms and conditions of this Agreement, except that the Railroad will not assign or permit the assignment of any Equipment for service outside the United States and Canada.

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

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, mechanic's, workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. Patent Indemnities; Seller's Representations; and Seller's Warranties of Material and Workmanship. Except in cases of articles or materials specified by the Railroad and not manufactured by the Seller and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Seller, the Seller agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of the Equip-

ment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Seller or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Seller which infringes or is claimed to infringe on any patent or other right. The Seller agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which Seller has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by Seller for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Seller further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of

action. Seller will give notice to the Railroad of any claim known to Seller from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Seller of any claim known to the Railroad from which liability may be charged against such Seller hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Seller represents that it is not entering into this Agreement, or entering into any assignment of this Agreement, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

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

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

and covenants of the Railroad under this Agreement, or an assignment by the Railroad to one of its wholly-owned subsidiary companies, shall not be deemed a breach of this covenant, provided that the Railroad (with binding effect upon successors of the Railroad) agrees not to be released as a primary obligor for the payment of principal and interest when due and payable (whether by acceleration or otherwise) on indebtedness outstanding under this Agreement on the date of such sale, assignment, transfer or disposition.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Seller from, any of the obligations of the Seller to sell and deliver the Equipment in accordance with this Agreement or to respond to its obligations and warranties hereunder, or relieve the Railroad of any of its obligations to the Seller which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall,

to the extent so assigned, be made to the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment sellers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Seller with respect to the Equipment or the manufacture, construction, delivery, repair or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Seller. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Seller.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee on or prior to the date for settlement, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts of

copies as may reasonably be requested, except for any opinion of counsel for such assignee, (b) deliver to the assignee, (1) within 120 days after each fiscal year of the Railroad, a copy of its annual audited consolidated financial statement, prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and signed by an independent certified public accountant who shall be satisfactory to such assignee, (2) within 45 days after each quarter (except the last quarter) of the Railroad, a copy of its unaudited consolidated financial statement, similarly prepared and signed by the chief financial officer of the Railroad, (c) deliver to the assignee, together with the financial statements furnished by the Railroad under preceding clauses (b)(1) and (2), a certificate of an officer of the Railroad, dated as of such settlement date, to the effect that no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954 as amended) have been filed and are currently in effect which would adversely affect the security interest of the assignee in the Equipment, and (d) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Seller and the assignee shall not make payment to the Seller with respect to units of the Equipment as provided in the instrument making such assignment, the Seller will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such

assignee, the Railroad will, not later than ninety (90) days after the date such payment was due, pay or cause to be paid to the Seller the aggregate unpaid Purchase Price of such units of the Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the highest prime rate of interest charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

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

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement when payment thereof shall be due hereunder and such failure shall continue for more than 5 business days after payment thereof shall be due hereunder; or

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

(c) any indebtedness or obligation of the Railroad, including, without limitation, indebtedness in connection with leases of equipment, conditional sales agreements or the like, or under the First and Refunding Mortgage of the Railroad, becomes due prior to its expressed maturity by reason of any default by the Railroad in the performances or observance of any obligation or condition or is otherwise not paid when due; or

(d) a petition for reorganization under Section 77 of the

Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, whether pursuant to the Bankruptcy Reform Act of 1978 or subsequent amendments thereof, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed and affirmed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) any other 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 readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers

appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment and shall fail or refuse to cause such assignment or transfer to be cancelled by agreement of all parties having any interest therein and to recover possession of such unit (or make provision satisfactory to the Vendor for such compliance) within 15 days after written notice from the Vendor demanding such cancellation and recovery of possession;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable.

The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

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

ARTICLE 17. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies,

services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the

Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and

the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession

of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, 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 Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money

received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange applicable (if any) for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein. The Vendor and the Railroad agree that the Vendor shall be

entitled to all rights provided for in §77(j) [11 U.S.C. §1168 after October 1, 1979] of the Bankruptcy Act or any comparable provision of any amendment thereto, or of any other bankruptcy act, so that the Vendor shall have the right to take possession of the Equipment upon an event of default under this Agreement regardless of whether or not the Railroad is in reorganization.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

ARTICLE 18. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction

(which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. Recording. To the extent applicable, the Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement including, without limitation, the filing of financing statements pursuant to the Uniform Commercial Code; and the Railroad

will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for Seller) 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 all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

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

(a) to the Railroad, at Western Pacific Building, 526 Mission Street, San Francisco, California 94105, attention Senior Vice President-Finance,

(b) to the Seller, at 58 Haltiner, River Rouge, Michigan 48218, and

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

other parties hereto by such assignee,  
or at such other address as may have been furnished in writing by  
such party to the other parties to this Agreement.

ARTICLE 22. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; 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, if any, 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.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement

is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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.

THE WESTERN PACIFIC RAILROAD COMPANY

By *W. H. Stumbo, Jr.*  
Its Senior Vice President-Finance

ATTEST:

*A. D. Brew*  
SECRETARY

WHITEHEAD & KALES COMPANY

By *C. E. Wieser*  
Its 

C. E. WIESER VICE PRES.-FINANCE
------------------------------------

ATTEST:

*G. Konchal*  
G. KONCHAL  
TREASURER

STATE OF CALIFORNIA )  
 : ss.  
CITY AND COUNTY OF SAN FRANCISCO)

On this 8th day of November, 1979, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is the Senior Vice President-Finance of THE WESTERN PACIFIC RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Diane Lorette Fafoutis  
Notary Public

[Notarial Seal]

My Commission expires: Dec. 14, 1979



STATE OF Michigan )  
 : ss.  
COUNTY OF Wayne )

On this 9th day of November, 1979, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is a VICE PRES. FINANCE of WHITEHEAD & KALES COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[Notarial Seal]

ARDIS W. HALL  
Notary Public, Wayne County, Mich.  
My Commission Expires July 22, 1981

Ardis W Hall  
Notary Public

SCHEDULE A

CONDITIONAL SALE AGREEMENT  
Dated as of October 1, 1979  
Between  
WHITEHEAD & KALES COMPANY  
and

THE WESTERN PACIFIC RAILROAD COMPANY

Railroad's Road Numbers

- Item 1: 22 Bi-level auto racks                      WP B531 through B552
- Item 2: Base price: \$25,000 per unit
- Item 3: (a) Whitehead & Kales Company, the Seller, warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule A is attached (hereinafter called the Agreement) and warrants the Equipment will be free from defects in material and workmanship under normal use and service, the Seller's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year after the delivery of such unit to the Railroad, be returned to the Seller with transportation charges prepaid and which the Seller's examination shall disclose to its satisfaction to have been thus defective. The Seller shall not be liable for any indirect, incidental, special, commercial or consequential damages of whatever nature.

The foregoing warranty of the Seller is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and of all other obligations or liabilities on the part of the Seller, except for its obligations under Articles 2, 3, 4 and 14 of the Agreement, and the Seller neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of its Equipment, except as aforesaid.

The Seller further agrees with the Railroad that neither the inspection as provided in Article 3

of the Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 3.

AGREEMENT AND ASSIGNMENT, dated as of October 1, 1979, between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the Assignee), and WHITEHEAD & KALES COMPANY (hereinafter called the Assignor).

WHEREAS, the Assignor and The Western Pacific Railroad Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Assignor and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Assignee to the Assignor, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

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

(a) all the right, title and interest of the Assignor in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit is paid to the Assignor by the Assignee pursuant to Section 4 hereof;

(b) all the right, title and interest of the Assignor in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to reimbursement for

taxes paid or incurred by the Assignor as provided in Article 5 thereof) and in and to any and all amounts which may be or become due or owing by the Railroad to the Assignor under the Conditional Sale Agreement 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 by subparagraph (b) hereof, all the Assignor's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Assignor for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Assignor to construct and deliver the Equipment, in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to such Seller contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 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 Assignor 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 Assignor. In

furtherance of the foregoing assignment and transfer, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Assignor agrees that it shall construct the Equipment in full accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Assignor. The Assignor further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad and other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); ~~all of which the Assignor hereby agrees to cause to be released on or before the Closing Date [as defined in Article 4 of the Conditional Sale Agreement] for such unit; and~~ the Assignor further agrees that it will defend the title to each

*cc*  
INITIAL  
HERE  
*Des*

unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Assignor under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder, and the rights of the Assignee under this Assignment,



SECTION 3. The Assignor agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment 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 Assignor will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Assignor of any obligation with respect to the Equipment or the manufacture, constructions, repair, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Assignor. The Seller's obligation so to indemnify, protect, and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and

accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Seller of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Seller the right, at the Seller's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

The Assignor agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to each Group (as defined in said Article 4) of Equipment, shall pay to the Assignor an amount equal to the portion of the Purchase Price of the units of Equipment in such Group as shown on the invoice or invoices therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, the following documents, in form and substance satisfactory to it and to its counsel, in such number of counterparts as may be reasonably requested:

- (a) a bill of sale from the Assignor to the Assignee transferring to the Assignee all right, title and interest of the

Assignor in the units of Equipment in the Group, warranting to the Assignee that at the time of delivery of such units under the Conditional Sale Agreement the Assignor had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment); warranting to the Assignee that on the date of such bill of sale such units were free of all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad) which are prior or equal to the security interest of the Assignee in such units; and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Assignor under the Conditional Sale Agreement excluding those created by any general mortgage of the Railroad;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in the Group, as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Assignor for the units of Equipment in

the Group for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Assignor and is a legal, valid and binding instrument, enforceable in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Assignee, is a legal, valid and binding instrument (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) the Assignee has a valid and perfected security interest in the units of the Equipment and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by any general mortgage of the Railroad, all of which have been released; other than those created by the Conditional Sale Agreement; and other than the rights of the Assignee under this Assignment), (v) no approval of the Interstate Commerce

Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vi) for the units of rolling stock in the Equipment, the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, <sup>(vii)</sup> and for the units of non-rolling stock, all filings and recordations as are necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia have been made, including, without limitation, the filing of a financing statement with the Secretary of State, State of California, pursuant to the Uniform Commercial Code covering such units of non-rolling stock, (viii) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ix) there is no condition, restriction or requirement in the documents constituting the corporate charter of the Railroad relating to or affecting the execution and delivery by the Railroad of the Conditional Sale Agreement or the enforceability thereof in accordance with its terms or requiring any approval of its stockholders in respect thereof and (x) neither the execution and delivery of the Con-

ditional Sale Agreement and this Assignment, nor the consummation of the transactions therein and herein contemplated, nor the fulfillment of the terms thereof and hereof will conflict with or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, writ, injunction or decree of any court or governmental instrumentality, domestic or foreign, or of any agreement or instrument to which the Railroad is now a party or constitute a default thereunder;

(e) an opinion of counsel for the Assignor, dated as of such Closing Date, to the effect that (i) the Assignor is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Assignor and enforceable against the Assignor in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Assignor and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Assignor, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Assignor and is valid and effective to transfer all right, title and interest of the Assignor in and to the units of Equipment to the Assignee,

free from all claims, liens, security interest and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment) arising from, through or under the Assignor; and

(f) a certificate of an officer of the Railroad, dated as of such settlement date, to the effect that no event of default, or event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954 as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment.

In giving the opinions specified in subparagraphs (d) and (e) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if any other event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be

continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for the Group, the Assignee shall reassign to the Assignor, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment.

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

SECTION 6. The Assignor hereby:

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

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, execute and deliver all such further instruments of assignment, transfer and assurance as the Assignee shall cause to be prepared and submitted to the Assignor, and the Assignor shall do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more

perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, its successors and assigns, it will, subsequent to payment by the Assignee to such Assignor of the amounts required to be paid under Section 4 hereof, execute any and all instruments submitted to it 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 Assignor therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

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

WHITEHEAD & KALES COMPANY

By

*C. E. Wieser*

Its

**C. E. WIESER**  
**VICE PRES.-FINANCE**

Attest:

*G. Konchal*

G. KONCHAL  
TREASURER

CONTINENTAL ILLINOIS NATIONAL BANK  
AND TRUST COMPANY OF CHICAGO

By

*James R. [Signature]*

Its

*Vice President*

Attest:

*George T. Plunk*

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF COOK )

On this 14th day of November, 1979, before me personally appeared James R. Coulter, to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Joseph B. Schmitz  
Notary Public

MY COMMISSION EXPIRES DECEMBER 5, 1981

[NOTARIAL SEAL]

My Commission expires:

STATE OF Michigan )  
 ) SS.  
COUNTY OF Wayne )

On this 9th day of November, 1979, before me personally appeared C. E. WIESER, to me personally known, who, being by me duly sworn, says that he is a VICE PRES.-FINANCE of WHITEHEAD & KALES COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Ardis W. Hall  
Notary Public

ARDIS W. HALL  
Notary Public, Wayne County, Mich.  
My Commission Expires July 22, 1981

[NOTARIAL SEAL]

My Commission Expires:

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

THE WESTERN PACIFIC RAILROAD COMPANY hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment as of October 1, 1979.

THE WESTERN PACIFIC RAILROAD COMPANY

By: \_\_\_\_\_



R. W. STUMBO, JR.

Sr. Vice President-Finance