MISSOURI PACIFIC RAILROAD CO.

210 N. 13TH STREET

ST. LOUIS, MISSOURI 63103

TEL. AREA CODE 314 622-0123

LAW DEPARTMENT

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ATTORNEYS

No. 8-221A010

Date AUG 9 1978

Fee $50.00

ICC Washington, D. C.

August 8, 1978

RECORDATION NO. 9637 Filed & Recorded

AUG 9 1978 -10 25 AM

INTERSTATE COMMERCE COMMISSION

FOR DELIVERY BY MESSENGER

Ms. Nancy Wilson
Acting Secretary
Interstate Commerce Commission
Washington, DC 20423

Dear Sir:

Enclosed for filing and recording pursuant to Sec. 20c of the Interstate Commerce Act, 49 Code Fed. Regs. Sec. 1116.1(a) et seq are seven executed counterparts of Conditional Sale Agreement between the Manufacturer hereinafter named, as Vendor, and Missouri Pacific Railroad Company, Vendee, and an Agreement and Assignment between the Vendor and the Bank hereinafter named, as Assignee, both instruments dated as of February 1, 1978.

The instrument transmitted herewith for filing and recording, consisting of the Conditional Sale Agreement and the Assignment, covers the following equipment:

No. of Units	Description
426	Tri-Level Automobile Racks, serial numbers 62683 through 62810, both inclusive, and Nos. 62823 through 63546, both inclusive.

The names and addresses of the parties to the transaction set forth in this instrument transmitted herewith for filing and recording are:

Vendor: (Manufacturer) Whitehead & Kales Company
58 Haltiner Street
River Rouge, Michigan 48218

RECEIVED
AUG 9 9 57 AM '78
I.C.C.
FEE OPERATION BR.

Vendee: Missouri Pacific Railroad Company
210 North 13th Street
St. Louis, Missouri 63103

Assignee: (Bank) Chemical Bank
20 Pine Street
New York, New York 10005

Voucher for $50 to cover filing and recording fee is enclosed.

Upon filing and recording of the original document, six counterparts showing recordation data should be returned to:

Mrs. J. C. Durand
Missouri Pacific Railroad Company
Suite 1203 - 1825 K Street, N.W.
Washington, DC 20006
(Tel: 628-2921)

who will arrange to pick same up at your office as soon as recordation is accomplished.

Very truly yours,

Paul J. M. Rutterer

Paul J. M. Rutterer

PJMR:slb
Encl:
Conditional Sale Agreement
and Assignment (7)

Voucher for $50

Interstate Commerce Commission

Washington, D.C. 20423

8/9/78

OFFICE OF THE SECRETARY

Paul J.M. Rutterer
Missouri Pacific RR. Co.
210 N.13th Street
St. Louis , Missouri 63103

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 8/9/78 at 10:05am , and assigned recordation number(s) 9637

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

RECORDATION NO. 9637 Filed & Recorded

AUG 9 1978 -10 25 AM

INTERSTATE COMMERCE COMMISSION

Execution Copy

CONDITIONAL SALE AGREEMENT

Between

WHITEHEAD & KALES COMPANY

and

MISSOURI PACIFIC RAILROAD COMPANY

Dated as of February 1, 1978

AGREEMENT AND ASSIGNMENT

Between

WHITEHEAD & KALES COMPANY

and

CHEMICAL BANK

Dated as of February 1, 1978

CONDITIONAL SALE AGREEMENT

Between

WHITEHEAD & KALES COMPANY

and

MISSOURI PACIFIC RAILROAD COMPANY

Dated as of February 1, 1978

CONDITIONAL SALE AGREEMENT, dated as of February 1, 1978, between WHITEHEAD & KALES COMPANY, a corporation of the State of Michigan (hereinafter called Vendor or Manufacturer, as more particularly set forth in Article 25 hereof), and MISSOURI PACIFIC RAILROAD COMPANY, a corporation of the State of Missouri (hereinafter called Vendee);

WHEREAS, Manufacturer entered into a Contract with Vendee for the construction of the automobile racks described in Schedule A hereto (hereinafter each individual automobile rack to be called a "unit of Equipment" and the automobile racks collectively to be called the "Equipment");

WHEREAS, Manufacturer and Vendee have agreed that this Agreement shall exclusively and completely state the rights of Manufacturer and Vendee with respect to the Equipment and shall supersede all other agreements, oral or written, with respect to the Equipment; and

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

ARTICLE 1. *Construction and Sale.* Manufacturer will construct, and will sell and deliver the Equipment to Vendee and Vendee will purchase from Manufacturer and accept delivery of and pay for (as hereinafter provided), pursuant to this Agreement, the Equipment, each unit of which will be constructed in accordance with the specifications applicable thereto and in accordance with such minor modifications thereof as may have been agreed upon by Manufacturer and Vendee (which specifications and modifications, if any, are hereinafter called the Specifications). The design and quality of equipment and material in the Equipment shall conform to all Interstate Commerce Commission requirements and specifications.

ARTICLE 2. *Inspection and Delivery.* The Equipment during construction is subject to inspection by inspectors or other authorized representatives on behalf of Vendee. Upon completion of each unit of the Equipment, a representative on behalf of Vendee shall inspect such unit, and such unit having complied with the hereinafter mentioned requirements, such inspector will specify, in writing, each of which writings shall be deemed a certificate of acceptance (hereinafter called a Certificate of Acceptance)

under this Agreement, stating that such unit has been inspected and accepted by him on behalf of Vendee; that such unit conforms to the Specifications and to all applicable Interstate Commerce Commission requirements and specifications; and that such unit is in good order and condition. From and after execution and delivery of a Certificate of Acceptance with respect to any such unit, the responsibility and risk of loss of such unit passed or shall pass to Vendee.

Each unit of the Equipment shall, if a Certificate of Acceptance in respect thereof has been received by Vendor, be deemed delivered and accepted for all purposes of this agreement at the time of the execution and delivery of this Agreement, or at such time as such unit shall have been delivered by Manufacturer to Vendee at River Rouge, Michigan (f.o.b. tracks of the Consolidated Rail Corporation), whichever shall be later.

If, for any reason beyond the immediate and exclusive control of Manufacturer, any unit or units of Equipment shall not be constructed and available for inspection by and delivery to Vendee in sufficient time to be included in the final Group which is to be settled for on the final Closing Date (as defined in Article 3), Vendee may at its option reasonably extend said final Closing Date so as to include such unit or units, or may in the alternative elect to exclude from this Agreement all such units of Equipment as are not available (by reason of timely inspection and delivery) to be included in the Group which is to be settled for on the final Closing Date. Reasonable notice in writing of Vendee's election in this regard shall be given to Manufacturer.

In the event that any unit of Equipment is not delivered, accepted and settled for by the final Closing Date (as initially defined in Article 3, or as subsequently extended), such units shall be excluded from this Agreement, and Manufacturer and Vendee shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If Manufacturer's failure to deliver any unit of Equipment so excluded from this Agreement shall have resulted from or been occasioned by any cause beyond Manufacturer's immediate and exclusive control, including but not limited to an act of God, war or war conditions, riot or civil commotion, insurrection, sabotage, embargo, act or restriction of a civil or military authority, fire, explosion, storm, flood, accident, quarantine restriction, damage to plant or equipment, mill condition, boycott, strike, labor

dispute or differences with workers or subcontractors, transportation or delivery delay, or shortage of cars, parts, material, labor, fuel or energy, Vendee shall remain obligated to accept all such units of Equipment and to pay the full purchase price thereof, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by Manufacturer, such payment to be in cash upon delivery of such units of Equipment or, if agreed to by Manufacturer, by means of a conditional sale agreement or other appropriate method of financing determined and arranged by Vendee.

ARTICLE 3. *Purchase Price and Payment.* The base price of the Equipment, exclusive of interest and all other charges, is as set forth in Schedule A hereto. The base price of Equipment shall be subject to increase or decrease as may be agreed to in writing by the Manufacturer and the Vendee, and the term "Purchase Price" as used herein shall mean the base price as so increased or decreased; provided that the purchase price for each unit of Equipment shall not exceed the maximum price provided therefor in Schedule A hereto.

The Equipment may be settled for in not more than ~~three~~ FOUR groups, the units of Equipment to be settled for on any particular Closing Date (as defined in this Article 3) being hereinafter called a Group.

Vendee hereby acknowledges itself to be indebted to Vendor in the amount of, and hereby promises to pay in cash to Vendor on each Closing Date with respect to any Group for which settlement is then being made, an amount equal to the aggregate Purchase Price of all units of Equipment in such Group plus interest on the unpaid balance thereof, payable as follows:

(a) One installment of interest only for the period from and including the Closing Date to but not including January 1, 1979, payable on January 1, 1979 at the rate per annum of 8%;

(b) Fourteen substantially equal semiannual installments of principal plus accrued interest at a rate per annum of 8%, payable on July 1, 1979 and on the 1st day of each January and July thereafter to and including January 1, 1986; and

(c) Any amount by which the aggregate invoice cost of all units of Equipment in such Group exceeds the maximum Purchase Price of such Group pursuant to Schedule A.

The term "Closing Date" shall mean such date, not more than ten business days following presentation by Manufacturer to Vendee of an invoice and the Certificates of Acceptance for such a group as shall be fixed by Vendee by written notice delivered to Vendor at least seven business days prior to the Closing Date designated therein, or if Vendee shall fail for any reason to give, within the time above provided, notice to Manufacturer fixing the Closing Date, then "Closing Date" shall mean the tenth business day next following such presentation by Manufacturer to Vendee. The term "business days", as used herein, means calendar days, excluding Saturdays, Sundays and holidays. The final Closing Date shall be on or before December 31, 1978.

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

Vendee will pay interest at the rate of 9% per annum, to the extent legally enforceable, upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

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

The unpaid portion of the Conditional Sale Indebtedness, with accrued interest thereon, may be prepaid by Vendee without penalty upon five days' notice.

ARTICLE 4. *Taxes.* Vendee agrees that, in addition to all other payments herein provided, it will promptly pay or cause to be paid all Federal, state or local taxes, assessments, charges, fines, penalties or license fees (hereinafter collectively called taxes), hereinafter levied or imposed upon, or measured by this Agreement or any amounts received hereunder or any assignment hereof, or participation or interest in any assignment hereof, or any sale, use payment, shipment, delivery or transfer of title of the Equipment under the terms hereof, or upon the Equipment or any of the units thereof (excluding, (i) with respect to any Vendor, other than the Manufacturer, Federal income and excess profits taxes and net income and excess profits taxes imposed by any state under the laws of which such Vendor is incorporated or is licensed as a foreign corporation to do intra-

state business or in which such Vendor's principal place of business is located, and (ii) with respect to the Manufacturer, excluding all gross or net income or gross receipts taxes ((except gross income or gross receipts taxes in the nature of and in lieu of sales taxes) or excess profits taxes imposed upon the Vendor with respect to the amounts received by it under this Agreement) or upon the interest of the Vendee therein, or upon the Vendor solely by reason of its ownership of the Equipment or any of the units thereof, and will keep at all times all and every part of the Equipment free and clear of all taxes which might in any way affect the title of Vendor or result in a lien upon the Equipment or any unit thereof; and if any tax shall have been levied against Vendor directly and paid by Vendor, Vendee shall reimburse Vendor on presentation of an invoice therefor; *provided, however,* that Vendee shall be under no obligation to pay any taxes of any kind as long as it is contesting in good faith and by appropriate legal proceedings such taxes, and the non-payment thereof does not, in the opinion of Vendor, adversely affect the property or rights of Vendor hereunder. In the event any tax reports are required to be made on the basis of individual units, Vendee will either make such reports in such manner as to show the ownership of such units by Vendor or will notify Vendor of such requirements and will make such reports in such manner as shall be satisfactory to Vendor.

ARTICLE 5. *Title to the Equipment.* Vendor shall and hereby does retain the full legal title to and property in the Equipment until Vendee shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to Vendee as herein provided.

When and only when Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided and all Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in, the Equipment shall pass to and vest in Vendee without further transfer or action on the part of Vendor, except that Vendor, if requested by Vendee so to do, will execute a bill or bills of sale transferring its title to the Equipment and property therein to Vendee or upon its order, free, if the Vendor executing such bill of sale shall be the Manufacturer, of all liens and encumbrances other than the rights of

Vendee hereunder and other than any liens and encumbrances (hereinafter called "Excepted Liens") which would not have arisen or would have been discharged if Vendee had performed all of its obligations hereunder or which are then being contested by Vendee or shall have arisen out of taxes, assessments, charges, litigation or other claims being contested by Vendee, and, if the Vendor executing such bill of sale shall not be the Manufacturer, free of all liens and encumbrances (other than Excepted Liens and the rights of Vendee hereunder) arising out of any act of such Vendor or of any Vendor (other than the Manufacturer) which shall have been a predecessor in interest of such Vendor (and such Vendor shall, at Vendee's expense, take such action as Vendee shall reasonably request to make available to Vendee any warranties of the Manufacturer or of any such predecessor Vendor). Vendor will deliver at the same place, for record or for filing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the title of Vendee to the Equipment, and will pay to Vendee any money paid to Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand by Vendee.

ARTICLE 6. *Marking of Equipment.* Vendee will cause to be plainly, distinctly, permanently and conspicuously marked by stencilling or otherwise on each unit of the Equipment before the Closing Date for such unit, in letters not less than one-half inch in height, a legend consisting of appropriate words designated by Vendee in order to protect the title of Vendor to the Equipment and its rights under this Agreement. Such mark shall be such as to be readily visible and as to indicate plainly Vendor's interest in the Equipment. In case any of the marks shall at any time be removed, defaced or destroyed, Vendee will immediately cause the same to be restored or replaced.

Vendee will cause each unit of the Equipment to be kept numbered with the identifying serial number thereof as set out in Schedule A hereto and will not permit the numbers of any such units to be changed except with

the consent of Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with Vendor by Vendee and filed, registered and recorded in all public offices where this Agreement shall have been filed, registered and recorded.

Vendee will not allow the names of any person, association or corporation to be placed on the Equipment as a designation *however,* Vendee may permit the Equipment to be lettered with Missouri Pacific's name or in some other appropriate manner for convenience of identification of the interest of Vendee therein or to indicate the nature of the service furnished thereby.

ARTICLE 7. *Replacement.* In the event that any unit of the Equipment shall be worn out, lost, destroyed or irreparably damaged from any cause whatsoever 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, Vendee shall promptly and fully inform Vendor in regard thereto. When the total value, determined as hereinafter provided, of the units that shall become worn out, lost, destroyed, or irreparably damaged shall amount to $50,000, Vendee shall pay to Vendor, within sixty days thereafter, a sum equal to the total value of such units and Vendor shall not thereafter have any interest in any material salvageable from such units. For all purposes of this Article 7, the value of any unit worn out, lost, destroyed or irreparably damaged shall be the greater of the Purchase Price of such unit or the cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, less, in either case, depreciation (but not any accelerated amortization), at a rate not in excess of 10% per annum, for the period elapsed since the Closing Date in respect of such unit to the date of its wearing out, loss, destruction or irreparable damage. The cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, and the applicable rate of depreciation, shall be determined by a certificate of the President, the Treasurer, an Assistant Treasurer, or the Chief Mechanical Officer of Vendee filed with Vendor at the time of the aforesaid payment and by such other and further evidence, if any, as shall reasonably be required by Vendor.

Any money paid to Vendor pursuant to the preceding paragraph of this Article 7 shall, as Vendee may direct in a written instrument filed with Vendor, at the time of such payment, be applied, in whole or in part, (i) to

prepay the installments of indebtedness payable pursuant to Article 3, without premium, in the inverse order of their maturity, with interest (payable by Vendee on the date of such application) to the date of payment at the rate applicable to such installments as provided in Article 3 hereof, or (ii) to or toward the cost of new automobile racks to replace such unit or units worn out, lost, destroyed or irreparably damaged.

Vendee will cause any replacing unit or units to be marked as provided in Article 6 hereof. Title to all such replacements shall be vested in Vendor, free from all claims, liens and encumbrances and shall be taken initially and shall be subject to the provisions hereof in all respects as though part of the original Equipment delivered hereunder. Vendee shall execute, acknowledge, deliver, file, register and record all such documents and do any and all acts as may be necessary or Vendor shall reasonably request to cause such replacements to come under and be subject to this Agreement and to protect the title of Vendor thereto.

ARTICLE 8. *Maintenance and Repair.* Vendee will at all times, maintain, or cause the Equipment to be maintained, in good order and repair without expense to Vendor.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement Vendee will comply with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the Equipment; and in the event that such laws or rules require the alteration of the Equipment, Vendee will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however,* that Vendee 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 Vendor, adversely affect the property or rights of Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before March 31 in each year, commencing with the year 1979, Vendee, if requested by Vendor, will furnish, or cause to be furnished, to Vendor an accurate statement showing, as at the preceding December 31, the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have been worn out, lost, destroyed,

or irreparably damaged, whether by accident or otherwise, during the preceding calendar year (and in the case of the first such statement, since the dates of delivery of the Equipment), the numbers of the units then undergoing repairs and awaiting repairs, and such other information regarding the condition and state of repair of the Equipment as Vendor may reasonably request. Together with such statement Vendee will also furnish or cause to be furnished to Vendor a statement signed by the President or the Chief Mechanical Officer of Vendee, stating that, in the case of all Equipment repainted during the preceding calendar year, the marks required by Article 6 hereof have been preserved or replaced. Vendor shall have the right, by its agents, but shall be under no obligation, to inspect the Equipment and the records of Vendee with respect thereto at any reasonable time during the continuance of this Agreement; *provided, however,* that Vendee does not assume liability for any injury to, or the death of, any agent or employee of Vendor incurred while exercising any rights of Vendor under the preceding provisions of this sentence.

ARTICLE 11. *Possession and Use.* The Vendee, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Vendee, to the possession of the Equipment and the use thereof (a) upon the lines of railroad owned or operated by it or any Affiliate of the Vendee, whether such line be operated alone or jointly with another and whether under lease or otherwise, (b) upon lines of railroad over which the Vendee or any Affiliate of the Vendee has trackage rights or rights for operation of its trains, (c) upon the lines of railroads connecting and other carriers in the usual interchange of traffic, and (d) upon the lines of railroad of other carriers over which through or run-through service may from time to time be afforded; and the Vendee may lease the Equipment to other responsible railroads or responsible industries, but only upon and subject to all the terms and conditions of this Agreement. Affiliate as used in this Article shall mean any railroad company controlling or controlled by, or under common control with, the Vendee.

ARTICLE 12. *Prohibition Against Liens.* Vendee will pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Vendee or its successors or assigns (including any lessee or user) which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of 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 non-payment thereof does not, in the opinion of Vendor, adversely affect the property or rights of Vendor hereunder.

ARTICLE 13. *Indemnities.* Vendee agrees to indemnify and save harmless 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 the retention by Vendor of title to the Equipment or out of the use and operation thereof by Vendee or any other person during the period when title thereto remains in Vendor.

This covenant of indemnity and the covenants set forth in Article 4 hereof shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

Vendee will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

Manufacturer warrants that its Equipment will be built in accordance with the requirements, specifications, and standards set forth in Article 1 hereof and warrants the Equipment will be free from defects in material and workmanship under normal use and service, the Manufacturer's obligations 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 Vendee or the Assignee, be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The Manufacturer shall not be liable for any indirect or consequential damages of whatever nature.

THE FOREGOING WARRANTY OF THE MANUFACTURER 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 MANUFACTURER, AND THE MANUFACTURER 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.

Manufacturer agrees with Vendee that the acceptance of any unit by Vendee under Article 2 hereof shall not be deemed a waiver by Vendee of any of its rights under this paragraph.

Manufacturer covenants and agrees to hold Vendee and any lessee of the Equipment harmless from any liability or expense arising out of any injury to, or death of, any officer or employee of Manufacturer arising out of the inspection or repair of any unit of the Equipment or any part thereof by Manufacturer, prior to acceptance of delivery of such unit by the Vendee or relative to repairs required by Manufacturer's above stated warranty obligation, unless the injury arises out of the willful misconduct or negligence of Vendee.

ARTICLE 14. *Patent Indemnities.* Except in cases of articles or materials specified by the Vendee and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Vendee 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 Vendee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Vendee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Vendee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right.

ARTICLE 15. *Assignments.* Vendee 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 Equipment without first obtaining the written consent of Vendor.

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

Upon any such assignment, either the assignor or the assignee shall give written notice to Vendee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by Vendee of the notification of any such assignment, all payments thereafter to be made by Vendee hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

Vendee understands that the transfer or assignment of this Agreement or of some or all of the rights of Vendor hereunder is contemplated. Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement, or of any of the rights of Vendor hereunder, and for the purpose of inducing such acquisition that in the event of such transfer or assignment by 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, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Manufacturer in respect of the Equipment or in respect of any indemnity

herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Vendee by Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by Vendee against and only against Manufacturer.

In the event of any such transfer or assignment, Vendee will, in connection with the settlement for the Equipment, or any part thereof, deliver to the assignee or transferee all documents required by the terms of such transfer or assignment to be delivered by Vendee to the assignee or transferee in connection with such settlement.

In the event of any such transfer or assignment, or successive transfers or assignments by Vendor, of title to the Equipment and of Vendor's rights hereunder in respect thereof, Vendee will, at Vendee's expense, whenever requested by such transferee or assignee, change or cause the change of the markings to be maintained on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such markings to bear such words or legend as shall be specified by such transferee or assignee.

Nothing in this Article 15 shall be deemed to restrict the right of Vendee to assign or transfer its interest under this Agreement in the Equipment or possession of the Equipment to any corporation (which shall have assumed the obligations hereunder of Vendee) into which or with which Vendee shall have become merged or consolidated or which shall have acquired the property of Vendee as an entirety or substantially as an entirety.

If Manufacturer shall have assigned this Agreement in whole or in part to any person, natural or corporate (hereinafter called the "Assignee") and as a result of such assignment the Assignee is entitled to receive the payments specified in Article 3 hereof and Manufacturer shall not have received on or before the Closing Date payment in full of the purchase price specified in Article 3 for each and every unit of the Equipment for any reason whatsoever other than solely because of Manufacturer's failure to perform and fulfill a condition precedent to the receipt by Manufacturer of such payment, the performance and fulfillment of which is in the sole and exclusive control of Manufacturer, Manufacturer shall promptly notify Vendee of Manufacturer's failure to receive such payment and Vendee shall,

unless Manufacturer shall have received such payment from Assignee prior thereto, pay to Manufacturer in cash within twenty (20) days after the receipt by Vendee of such notification the purchase price specified in Article 3 for each and every unit of Equipment, together with interest, at the rate of 8% per annum, on the aggregate purchase price of all such units of Equipment from the Closing Date to the date on which Vendee shall have paid in full to Manufacturer such aggregate purchase price.

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

(a) Vendee shall fail to pay in full any sum payable by it as herein provided within ten (10) days after the mailing by Vendor to it of notice of such failure; or

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

(c) Any proceedings shall be commenced by or against Vendee for the appointment of a receiver or receivers or 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 proceeding which does not seek any readjustment or impairment of any obligations contained in this Agreement) or Vendee shall suffer any involuntary transfer of its interest in and under this Agreement by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such transfer, decree or process shall within thirty days from the effective date thereof be nullified, stayed or otherwise rendered ineffective), and all the obligations of Vendee under this Agreement shall not have been either duly assumed in writing pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed for Vendee 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 a trustee or trustees or receiver or receivers in bankruptcy or

insolvency proceedings pursuant to order or decree of such court, or otherwise given the same status as obligations assumed by such a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier (unless such proceedings shall have theretofore been dismissed, or discontinued); or

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

then at any time after the occurrence of such an event of default Vendor may, upon written notice to Vendee and upon compliance with any legal requirements then in force and applicable to such action by 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 such declaration at the rate of 9% per annum to the extent legally enforceable, and 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 Vendee wherever situated.

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

ARTICLE 17. *Remedies.* If any event of default shall occur, then at any time after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Vendor, to the extent not prohibited by any mandatory requirements of law, may, upon such further

notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by 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 Vendee 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 Vendee or any other person, and for such purpose may enter upon premises of Vendee where any of the Equipment may be located and may in connection with such removal use any facilities of Vendee without process of law. In case Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the premises of Vendee for the delivery of the Equipment to Vendor, Vendee shall, at its own expense, including any and all costs to remove the Equipment from the cars to which the equipment is attached, forthwith cause the Equipment to be moved to such point or points as shall be designated by Vendor and shall there deliver the Equipment or cause it to be delivered to Vendor; and, at the option of Vendor, Vendor may keep the Equipment on any of the premises of Vendee until Vendor shall have leased, sold, or otherwise disposed of the same, and for such purpose Vendee agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by Vendor reasonably convenient to Vendee. This agreement to deliver the Equipment as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction over the premises, Vendor shall be entitled to a decree against Vendee requiring specific performance hereof. Vendee hereby expressly waives any and all claims against 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.

If an event of default shall occur, then and at any time thereafter during the continuance of such default Vendor may proceed to exercise one or more, or all of the Vendee's rights and remedies under any contract relating to the use of any of the Equipment, and in such event may collect any payments due thereunder. Treating any contract as continuing in effect and continuing to collect the payments thereunder shall not be deemed to be an election of remedies so as to prevent Vendor from declaring such contract terminated, or exercising any other remedy available to Vendor. If Vendor

shall so terminate the contract relating to the use of any of the Equipment, it shall be entitled to collect all unpaid sums due and payable to Vendee, and may lease or license the use of the Equipment or any units thereof upon such terms, in such manner and to such persons as it shall see fit, without notice to or consent by Vendee, and collect all rentals and other sums payable under any such lease or license.

If any event of default shall occur, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Purchase Price shall have been declared immediately due and payable as hereinbefore provided, Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election retain the Equipment as its own and make such disposition thereof as Vendor shall deem fit, and in such event all Vendee's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by Vendee may be retained by Vendor as compensation for the use of the Equipment by Vendee; *provided, however,* that if Vendee, within twenty (20) days of receipt of notice of Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of all the Equipment, together with interest thereon accrued and unpaid and all other payments due by Vendee under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in Vendee; or Vendor, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of Vendee, at law or in equity, at public or private sale and with or without advertisement as Vendor may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less attorney's fees and any other expenses incurred by Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to Vendor under the provisions of this Agreement. Written notice of Vendor's election to retain the Equipment for its own use may be given to Vendee by telegram or registered mail addressed to Vendee as provided in Article 22 hereof, at any time during a period of thirty (30) days after the entire indebtedness in respect of the Purchase Price shall have been

declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale of the Equipment hereunder may be held or conducted at the City of St. Louis, State of Missouri at such time or times as Vendor may fix (unless Vendor shall specify a different place or places, in which case the sale shall be held at such place or places and at such time or times as 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 Vendor may determine in compliance with any such requirements of law, provided that Vendee shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten (10) days prior thereto, by telegram or registered mail addressed to Vendee as provided in Article 22 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of Vendee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intended purchaser or a better price. To the extent not prohibited by any such requirements of law, Vendor may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to Vendee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to Vendor from Vendee hereunder.

Each and every power and remedy hereby specifically given to 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 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 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.

If, after applying all sums of money realized by Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, Vendee shall pay the amount of such deficiency to Vendor upon demand, and if Vendee shall fail to pay such deficiency, Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against Vendee. If, after applying as aforesaid all sums realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Vendee.

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

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of Vendor hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

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 such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by Vendee 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, Vendee, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of 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 herein provided or otherwise available to Vendor shall impair or affect Vendor's right thereafter to exercise the same.

Any extension of time for payment hereunder or other indulgence duly granted to Vendee shall not otherwise alter or affect Vendor's rights or Vendee's obligations hereunder. Vendor's acceptance of any payment after it shall become due hereunder shall not be deemed to alter or affect Vendee's obligations or Vendor's rights hereunder with respect to any subsequent payments or any prior or subsequent default hereunder.

ARTICLE 20. *Recording.* Vendee will cause this Agreement and any assignments hereof, and any supplements hereto or thereto, to be filed and recorded in accordance with the terms of the Missouri Uniform Commercial Code in order to publish notice of and to protect the title of Vendor to the Equipment; and Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by Vendor for the purpose of proper protection, to the satisfaction of counsel for 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 Vendee will promptly furnish or cause to be furnished to Vendor certificates or other evidences of such filing, registration and recording and an opinion or opinions of counsel for Vendee with respect thereto, satisfactory to Vendor.

ARTICLE 21. *Payment of Expenses.* In case any assignment of this Agreement is to an agent, then Vendee will pay the reasonable expenses of such agent or successor agent (including counsel fees) in connection with any such assignment, any agreement pursuant to which such agent is acting and the performance by such agent or successor agent of its duties under such agreement. In addition, Vendee will pay all stamp and other taxes, and will also pay the expenses of printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by Vendor of this Agreement, of any instrument supplemental to or amendatory of this Agreement, or such assignment, and of any certificate of the payment in full of the indebtedness in respect of Purchase Price due hereunder.

ARTICLE 22. *Notice.* Any notice hereunder to Vendee shall be deemed to be properly served if delivered or mailed to Vendee at 210 North 13th Street, St. Louis, Missouri 63103 or at such other address as may have been furnished in writing by Vendee to Vendor. Any notice hereunder to Manufacturer shall be deemed to be properly served if delivered or mailed

to Manufacturer at 58 Haltiner Street, River Rouge, Michigan 48218 or at such other address as may have been furnished in writing to Vendee by Manufacturer. Any notice hereunder to any assignee of Vendor or of Vendee shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to Vendee or Vendor, as the case may be, by such assignee.

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. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Missouri.

ARTICLE 25. *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 properties, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer" whenever used in this Agreement, means, both before and after such assignment, Whitehead & Kales Company and any successor or successors for the time being to its properties.

ARTICLE 26. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated February 1, 1978, for convenience, the actual date or dates of execution hereof by the parties hereto is, or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 27. *Effect and Modification.* This Agreement exclusively and completely states the rights of Vendor and Vendee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation 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 Vendor and Vendee.

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

MISSOURI PACIFIC RAILROAD COMPANY

By

Vice President

Attest:

Assistant Secretary

WHITEHEAD & KALES COMPANY

By

Vice President—Finance

C. E. WIESER

Attest:

G. KONCHAL
TREASURER ~~Secretary~~

STATE OF MISSOURI
COUNTY OF ST. LOUIS } SS.:

On this 11th day of JULY, 1978, before me appeared M. M. HENNELLY, to me personally known, who, being by me duly sworn, says that he is Vice President of MISSOURI PACIFIC RAILROAD COMPANY and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and that said Officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires

This act performed in the City of St. Louis, which adjoins the County of St. Louis in which I was commissioned.

R. C. Mason
Notary Public
R. C. MASON, NOTARY PUBLIC
County of St. Louis, State of Missouri
My Commission Expires September 28, 1978

STATE OF MICHIGAN
COUNTY OF WAYNE } SS.:

On this, the 17th day of July, 1978, before me, the undersigned officer, personally appeared C. E. WIESER, to me personally known, who, acknowledged himself to be a Vice President of WHITEHEAD & KALES COMPANY, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation and that said Officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

SCHEDULE A

DESCRIPTION OF EQUIPMENT	—	426 Tri-Level Automobile Racks
NUMBERS ON EQUIPMENT	—	Racks to bear Manufacturer's Serial Nos. 62683 through 62810 and Nos. 62823 through 63546. Each Rack is to bear two consecutive numbers.
BASE PRICE	—	$14,200,000 for 426 Units
MAXIMUM PRICE	—	$15,000,000 for 426 Units

AGREEMENT AND ASSIGNMENT

Between

WHITEHEAD & KALES COMPANY

and

CHEMICAL BANK

Dated as of February 1, 1978

AGREEMENT AND ASSIGNMENT dated as of February 1, 1978, between WHITEHEAD & KALES COMPANY (hereinafter called "Manufacturer"), and CHEMICAL BANK, whose address is New York City, New York (said Bank being hereinafter called "Assignee");

WHEREAS, Manufacturer and MISSOURI PACIFIC RAILROAD COMPANY, a corporation of the State of Missouri (hereinafter called "Vendee"), have entered into a Conditional Sale Agreement dated February 1, 1978 (hereinafter called the "Conditional Sale Agreement"), covering the sale, on the conditions therein set forth, by Manufacturer and the purchase by Vendee of the equipment described in Schedule A to the Conditional Sale Agreement (hereinafter called the "Equipment");

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

SECTION 1. Manufacturer hereby sells, assigns, transfers and sets over to Assignee, its successors and assigns, (a) all the right, title and interest of Manufacturer in and to the Equipment and each unit thereof when and as severally delivered and accepted under the Conditional Sale Agreement, and, as to each such unit, upon payment by Assignee to Manufacturer of the amounts required to be paid pursuant to the first paragraph of Section 5 hereof in respect of each such unit, (b) subject to the condition set forth in (a) of this paragraph to be performed by Assignee, all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement (except the right to manufacture and the right to receive the payments provided for in the last paragraph of Article 15 of the Conditional Sale Agreement and the right to reimbursement for taxes paid or incurred by Manufacturer as provided in Article 4 thereof, all and each and every one of which rights are hereby expressly and specifically reserved to Manufacturer) and in and to any and all amounts which may be or become due or owing by Vendee to Manufacturer under the Conditional Sale Agreement on account of its indebtedness in respect of the purchase price of the Equipment and interest thereon, and in and to any other sums which may be or become due from Vendee under the Conditional Sale Agreement, except as hereinabove

excluded, and (c) subject to the condition set forth in (a) of this paragraph to be performed by Assignee, all of Manufacturer's rights, powers, privileges, obligations and remedies under the Conditional Sale Agreement (without any recourse, however, against Manufacturer for or on account of the failure of Vendee 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 Agreement and Assignment shall not subject Assignee to, or transfer, or pass, or in any way affect or modify, the liability of Manufacturer in respect of its obligations contained in Articles 13 and 14 of the Conditional Sale Agreement, or relieve Vendee from its obligations to Manufacturer under said Articles 13 and 14, it being understood and agreed that notwithstanding this Agreement and Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of Manufacturer to Vendee in respect of the Equipment shall be and remain enforceable by Vendee, its successors and assigns, against and only against Manufacturer. In furtherance of the foregoing assignment and transfer, Manufacturer hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee or in the name of and as attorney, hereby irrevocably constituted, for Manufacturer, to ask, demand, sue for, collect, receive and enforce any and all sums to which Assignee is or may become entitled under this Agreement and Assignment and compliance by Vendee 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 Assignee.

SECTION 2. Manufacturer covenants and agrees that it has caused or will cause the Equipment to be constructed in accordance with the Conditional Sale Agreement and will deliver the same to Vendee in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Agreement and 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 Manufacturer and over which Manufacturer after the execution of this Assignment has the power to perform. Manufacturer further covenants and agrees that it will warrant to Assignee and Vendee that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement (as determined in accordance with the second paragraph of Article 2 thereof) it had legal title

to such unit and good and lawful right to sell such unit and that the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of Assignee under this Agreement and of all persons claiming by, through or under Assignee, and the rights of Vendee under the Conditional Sale Agreement and of all persons claiming by, through or under Vendee subject to the Conditional Sale Agreement; and Manufacturer further covenants and agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to such delivery of such unit under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of Assignee under this Agreement and of all persons claiming by, through or under Assignee, and the rights of Vendee under the Conditional Sale Agreement and of all persons claiming by, through or under Vendee subject to the Conditional Sale Agreement.

SECTION 3. Except in cases of articles or materials specified by the Vendee and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee, its or their assigns or the users of the Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed in infringe on any patent or other right. The Vendee likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, demands, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process or combination specified by the Vendee and not developed or purported to be developed by the Manufacturer, or article or material specified by the Vendee and not manufactured by the Manufacturer, which infringes or is claimed to infringe on any patent or other right.

Manufacturer agrees that any amount payable to Manufacturer by Vendee, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to Assignee, shall not be secured by any lien or charge on any of the units of the Equipment.

SECTION 4. Pursuant to Article 6 of the Conditional Sale Agreement, Assignee hereby designates that each unit of the Equipment will be plainly, distinctly, permanently and conspicuously marked by stencilling or otherwise of each unit in letters not less than one-half inch in height, with the following legend:

> "THIS EQUIPMENT IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF CHEMICAL BANK UNDER THE MISSOURI UNIFORM COMMERCIAL CODE AND UNDER SECTION 20C OF THE INTERSTATE COMMERCE ACT."

SECTION 5. Assignee on the Closing Date (hereinafter called the "Closing Date"), fixed as provided in Article 3 of the Conditional Sale Agreement, with respect to the Equipment, shall pay to Manufacturer (or to such person or institution as may be designated by Manufacturer in a written instrument signed by Manufacturer) an amount equal to that portion of the Purchase Price (as defined in Article 3 of the Conditional Sale Agreement) of the Equipment not payable by Vendee pursuant to sub-paragraph (c) of said Article 3, provided:

(i) There shall have been delivered to Assignee, at least five business days prior to such Closing Date, conformed counterparts or copies as may be appropriate of the documents hereinafter enumerated to be delivered on such Closing Date in such number as Assignee may reasonably request, and

(ii) There shall have been delivered to Assignee on the Closing Date, executed counterparts or copies as may be appropriate of the documents hereinafter enumerated in such number as Assignee may reasonably request;

(*a*) A Bill of Sale from Manufacturer to Assignee, evidencing the transfer to Assignee of title to the units of the Equipment and warranting to Assignee and to Vendee that, at the time of delivery of

such units to Vendee under the Conditional Sale Agreement, Manufacturer (as determined in accordance with the second paragraph of Article 2 thereof) had legal title to such units and good and lawful right to sell such units and the title to such units was free of all claims, liens and encumbrances of any nature except only the rights of Assignee under this Agreement and all persons claiming by, through or under Assignee and the rights of Vendee under the Conditional Sale Agreement and of all persons claiming by, through or under Vendee subject to the Conditional Sale Agreement;

(*b*) A certificate or certificates signed by a proper officer of Vendee stating that the units of the Equipment have been inspected and accepted on behalf of Vendee, are in good order and condition, conform to the specifications applicable thereto and to all applicable Interstate Commerce Commission requirements and specifications and have been marked in accordance with Section 4 hereof;

(*c*) A duplicate invoice for the Equipment accompanied by or having endorsed thereon a certification by Vendee as to the correctness of the prices stated therein;

(*d*) An opinion of counsel for Manufacturer stating that (*i*) Manufacturer is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (*ii*) the Conditional Sale Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect), (*iii*) this Agreement and Assignment has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms (subject, as to the enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect), (*iv*) Assignee is vested with all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement purported to be assigned to Assignee by this Agreement and Assignment, (*v*) title to the units of Equipment has been validly vested

in Assignee, and that such units, at the time of delivery thereof to Vendee under the Conditional Sale Agreement (as determined in accordance with the second paragraph of Article 2 thereof) were free of all claims, liens and encumbrances except only the rights of Assignee under this Agreement and of all persons claiming by, through or under Assignee and the rights of Vendee under the Conditional Sale Agreement and of all persons claiming by, through or under Vendee subject to the Conditional Sale Agreement and (*vi*) as to such other matters as Assignee shall reasonably request;

The opinion of counsel for Manufacturer with respect to the matters set forth in (*iv*) and (*v*) of this Section may be based solely on written warranties and representations made by Manufacturer and on an examination of the books of Manufacturer containing the minutes of meetings of its Board of Directors and of its shareholders.

(*e*) An opinion of counsel for Vendee stating that (*i*) the Conditional Sale Agreement has been duly authorized, executed and delivered and is a valid and binding instrument enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect, (*ii*) this Agreement and Assignment has been duly authorized, executed and delivered by Vendor and is a valid and binding instrument enforceable in accordance with its terms, (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization or moratorium laws from time to time in effect), (*iii*) Assignee is vested with all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement purported to be assigned to Assignee by this Agreement and Assignment, (*iv*) title to the units of Equipment is validly vested in Assignee, free of all claims, liens and encumbrances except the rights of Vendee under the 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, (*vi*) the Conditional Sale Agreement and this Agreement, or appropriate financing statements or other notices or instruments in respect hereof and thereof, have been filed, registered or recorded in all places as required by law for the protection of the title of Manufacturer and the Assignee to the Equipment and of their rights under the Conditional Sale Agreement and this Agreement,

(*vii*) that Vendee is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (*viii*) as to such other matters as Assignee shall reasonably request.

Assignee shall not be obligated to make any of the above-mentioned payments (*i*) 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, on the part of Manufacturer, shall be subsisting under the Conditional Sale Agreement or (*ii*) with respect to any Equipment not delivered and accepted under the Conditional Sale Agreement on or before December 31, 1978.

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

SECTION 6. Upon request of Assignee, its successors and assigns, 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 Manufacturer therein or in the Equipment. Manufacturer's obligation under this Section shall be conditioned upon its having received payment in full for any and all sums which Manufacturer is entitled to receive under this Agreement and under the Conditional Sale Agreement.

SECTION 7. 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 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 Assignee hereunder.

SECTION 8. Manufacturer hereby:

(*a*) Represents and warrants to Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized and lawfully executed by Manufacturer for a valid consideration, that it is a

valid existing agreement, binding upon Manufacturer in accordance with its terms and that it is now in force without amendment thereto; and

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

SECTION 9. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Missouri.

SECTION 10. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Assignee agrees to deliver one of such counterparts, or a certified copy thereof, to Vendee. Although this Agreement and Assignment is dated as of February 1, 1978, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

WHITEHEAD & KALES COMPANY

By C. E. Wieser

Vice President—Finance

C. E. WIESER

ATTEST: G. Konchal

G. KONCHAL
TREASURER ~~*Secretary*~~

CHEMICAL BANK

By Richard [illegible]

Vice President

ATTEST: Craig F. Novak

Assistant Secretary

STATE OF MICHIGAN }
COUNTY OF WAYNE } SS.:

On this 17th day of July, 1978, before me appeared **C. E. WIESER**, to me personally known, who, being by me duly sworn, says that he is a Vice President of WHITEHEAD & KALES COMPANY, and that the seal affixed to said 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 that said Officer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

New York
STATE OF ~~ILLINOIS~~ }
COUNTY OF ~~COOK~~ } SS.:
New York

I, Sophie La Due, a Notary Public, do hereby certify that Richard J. Hall, personally known to me to be a Vice President of CHEMICAL BANK, an Illinois banking corporation, ~~and~~ Craig F. Novak, personally known to me to be ~~an assistant~~ secretary of said Company, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Vice President ~~and assistant~~ Secretary ~~Hartley~~ they signed and delivered said instrument as Vice President ~~and assistant~~ secretary of said corporation and caused the seal to be affixed thereto, pursuant to authority given by the By-Laws of said corporation as their free and voluntary act, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and official seal this 3rd day of August 1978

Notary Public
Sophie La Due

SOPHIE LA DUE
Notary Public, State of New York
No. 30-7401525
Qualified in Nassau County
Commission Expires March 30, 1980

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

MISSOURI PACIFIC RAILROAD COMPANY hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment dated as of February 1, 1978.

MISSOURI PACIFIC RAILROAD COMPANY

By B M Kennedy

Vice President

Dated: July 11, 1978.