



NATIONAL RAILWAY UTILIZATION CORPORATION

1100 Centre Square East / 1500 Market Street / Philadelphia, Pennsylvania 19102 / (215) 569-2220

9973

RECORDATION NO. .... Filed 1425

December 28, 1978

DEC 28 1978 - 2 45 PM

INTERSTATE COMMERCE COMMISSION

9973 A 8-362A124

RECORDATION NO. .... Filed 1425

DEC 28 1978 - 2 45 PM

Interstate Commerce Commission  
12th and Constitution Avenue N.W.  
Washington, D. C. 20423

INTERSTATE COMMERCE COMMISSION

Date DEC 28 1978  
S. J. O'Connell

Attention: Mrs. Lee  
Room 1227

Gentlemen:

It is hereby respectfully requested that the following documents be recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act:

1. Conditional Sale Agreement, dated as of December 29, 1978:

Vendor: Whittaker Corporation  
(Berwick Forge & Fabricating Division)  
West Ninth Street  
Berwick, Pa. 18603

Vendee: (Purchaser)  
National Railway Utilization Corporation  
1100 Centre Square East  
1500 Market Street  
Philadelphia, Pa. 19102

2. Agreement and Assignment (of Conditional Sale Agreement), dated as of December 29, 1978:

Assignor (Vendor-Builder):  
Whittaker Corporation  
(Berwick Forge & Fabricating Division)  
(address as stated above)

Assignee: New England Merchants National Bank  
28 State Street  
Boston, Mass. 02109

*Handwritten signature: Mark Lloyd*

RECEIVED  
DEC 28 2 40 PM '78  
I.C.C.  
FEE OPERATION BR.



Interstate Commerce Commission  
December 28, 1978  
Page Two

General Description of the Equipment:

56 Boxcars, Type XM (50' - 6", 70-ton), bearing Road Numbers  
NSL 150494 - NSL 150549 (both inclusive), and each being marked:

"Ownership subject to a Security Agree-  
ment filed under the Interstate  
Commerce Act, Section 20c"

Sincerely,

A handwritten signature in cursive script, appearing to read "John A. Mariscotti".

John A. Mariscotti  
Executive Vice President

JAM:ebw

RECORDATION NO. 9973 Filed 1425  
DEC 28 1978 -2 45 PM  
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT  
BETWEEN  
NATIONAL RAILWAY UTILIZATION CORPORATION  
AND  
WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION

As of December 29, 1978

CONTENTS

<u>Article</u>	<u>Title</u>	<u>Page</u>
1	Definitions . . . . .	1
2	Sale and Purchase of Equipment . . . . .	3
3	Inspection and Delivery. . . . .	3
4	Purchase Price and Payment . . . . .	3
5	Title to The Equipment . . . . .	6
6	Additional Security. . . . .	8
7	Vendee's Representations and Warranties. .	8
8	Taxes and Reports. . . . .	13
9	Maintenance, Casualty Occurrences, and Insurance. . . . .	15
10	Reports and Inspection . . . . .	18
11	Marking of Equipment . . . . .	20
12	Compliance and Laws and Rules. . . . .	22
13	Possession and Use . . . . .	23
14	Prohibition Against Liens. . . . .	24
15	Indemnities and Warranties . . . . .	25
16	Assignments. . . . .	26
17	Defaults . . . . .	29
18	Remedies . . . . .	32
19	Applicable State Laws. . . . .	40
20	Recording. . . . .	41

21	Payment of Expenses. . . . .	42
22	Article Headings; Article References; Effect and Modification of Agreement . .	42
23	Notice . . . . .	43
24	Law Governing. . . . .	43
25	Execution. . . . .	44

Exhibit A - List of Equipment

Exhibit B - Specifications

Exhibit C - Closing Certificate

Exhibit D - Builder's Patent Title Indemnities and Warranties  
of Material and Workmanship

Conditional Sale Agreement dated as of December 29, 1978 (the "Agreement"), by and between WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION (the "Vendor" or "Builder" as more particularly set forth in Article 1 hereof) and NATIONAL RAILWAY UTILIZATION CORPORATION (the "Vendee").

WHEREAS, Whittaker Corporation through its Berwick Forge and Fabricating Division, desires to construct, sell and deliver to Vendee, and <sup>the Vendee</sup> desires to purchase, the new railroad equipment described in Exhibit A hereto (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. Definitions.

1.1 "Additional Security" - see Article 6.

1.2 "Articles" - see Article 22.1.

1.3 "Assignee" - New England Merchants National Bank.

1.4 "Bill of Sale" - means the Bill of Sale dated as of the date of this Agreement between the Builder and the Vendee.

1.5 "Builder" - Whittaker Corporation, Berwick Forge and Fabricating Division, the party hereto which has

manufactured the Equipment, both before and after any assignment its rights under this Agreement, and any successor or successors for the time being to its manufacturing properties and business.

1.6 "Business Days" - means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Boston, Massachusetts, New York City, New York or Philadelphia, Pennsylvania are authorized or obligated to remain closed.

1.7 "Casualty Occurrences" - see Article 9.2.

1.8 "Casualty Payment Date" - see Article 9.2.

1.9 "Casualty Value" - see Article 9.4.

1.10 "Certificate of Acceptance" - see Article 3.2.

1.11 "Closing Certificate" - see Article 4.1 and Exhibit C.

1.12 "Closing Date" - means the date set forth on the first page of this Agreement.

1.13 "Conditional Sale Indebtedness" - means \$2,090,872, the sum of the Purchase Price for each unit of Equipment delivered hereunder.

1.14 "Declaration of Default" - see Article 17.1.

1.15 "Equipment" - see introduction and Exhibit A.

1.16 "Impositions" - see Article 8.

1.17 "Payment Date" - see Article 4.3.

1.18 "Purchase Price" - see Article 4.1.

1.19 "Specifications" - see Article 3.1 and Exhibit 128

B.

1.20 "Vendee" - National Railway Utilization Corporation.

1.21 "Vendor" - Whittaker Corporation, Berwick Forge and Fabricating Division, before any assignment of its rights under this Agreement as the party hereto which has manufactured the Equipment, and any successor or successors for the time being to its manufacturing properties and business and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

ARTICLE 2. Sale and Purchase of Equipment. Pursuant to this Agreement the Vendor hereby <sup>agrees to</sup> sell and deliver to the PCB Vendee, and the Vendee hereby <sup>agrees to</sup> purchase from the Vendor and PCB accepts delivery of and pays for (as hereinafter provided), the PCB new Equipment listed in Exhibit A to this Agreement, the PCB design, quality and component parts of which conform, on the date of completion of manufacture of each Unit thereof, to all Department of Transportation and Interstate Commerce Commission

requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment.

ARTICLE 3. Inspection and Delivery.

3.1 The Vendor <sup>will</sup> ~~has~~ delivered all of the Equipment to <sup>PCB</sup> the Vendee by delivery to Vendee at the Builder's manufacturing facility.

3.2 The Equipment <sup>will be</sup> ~~has been~~ presented to an inspector <sup>PCB</sup> of the Vendee for inspection at the place of delivery of the Equipment, the Vendee <sup>will</sup> ~~acknowledges~~ that each such unit of the <sup>PCB</sup> Equipment conforms to the specifications set forth in Exhibit B and such inspector <sup>will</sup> ~~has executed~~ and delivered to the Vendor a <sup>PCB</sup> certificate of acceptance (the "Certificate of Acceptance") stating that the Equipment has been inspected and accepted on behalf of the Vendee and that the Equipment is marked in accordance with Article 11; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

3.3 A Closing Certificate in the form attached hereto as Exhibit C <sup>will be</sup> ~~has been~~ executed by the Vendor and the <sup>PCB</sup> Vendee confirming delivery and certain other matters.

ARTICLE 4. Purchase Price and Payment.

4.1 The purchase price for each unit of Equipment

(to be paid by the Vendee to the Vendor (including all commissions and inspection and delivery fees, but excluding impositions required to be paid by the Vendee pursuant to Article 8) is \$37,337 (the "Purchase Price") and the total purchase price to be paid by the Vendee to the Vendor for all of the Equipment is \$2,090,872 (the "Conditional Sale Indebtedness"). The Vendee has delivered at the Closing to the Vendor the sum of \$209,087.20 constituting ten percent (10%) of the aggregate unit purchase price specified in Exhibit A for all units of Equipment being purchased by the Vendee on the Closing Date.

4.2 The Vendee hereby agrees to pay in cash to the Vendor at such place as the Vendor may designate from time to time, the remaining portion of the total purchase price and accrued interest as follows: Nineteen (19) consecutive quarterly installments each in the amount of \$72,790.64 and a final quarterly payment in the amount of \$1,459,753.38. The installments with respect to the Conditional Sale Indebtedness shall be payable on each March 30, June 30, September 30 and December 30, (each such date being called a "Payment Date"). The Vendor will furnish to the Vendee a schedule within 10 days subsequent to the Closing Date showing the respective amounts of principal and interest payable on each Payment Date pursuant

to this clause.

4.3 The Vendee will pay interest, to the extent legally enforceable, at the rate of 13 3/4% per annum upon all matters remaining unpaid after the same shall have been due and payable pursuant to the terms of this Agreement or such lesser amounts as shall be legally enforceable, anything in this Agreement to the contrary notwithstanding.

4.4 All payments provided for in this Agreement shall be made in lawful money of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts at the address of the Vendor specified in Article 23. Except as provided in Article 9, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

ARTICLE 5. Title to the Equipment. The Vendor retains the full security title to and a security interest in the Equipment until the Vendee has made all its payments under this Agreement and has kept and performed all its agreements contained in this Agreement, notwithstanding the delivery of the Equipment to and the possession and use of the Equipment by the Vendee as provided in this Agreement. Any and all additions to the Equipment and all parts installed on and additions and replacements made to any unit of the Equipment

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 9, when and only when the Vendor shall have been paid the Conditional Sale Indebtedness, together with interest and all other payments as herein provided, and all the 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 the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Vendee, 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 Vendee at its address referred to in Article 23, (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 to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to

Article 9 and not theretofore applied as therein provided. The Vendee 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 Vendee.

ARTICLE 6. Additional Security. As additional security for the payment and performance of all obligations of the Vendee under this Agreement, Vendee assigns and grants to the Vendor a security interest in the Equipment and in all of Vendee's right, title, and interest in and to the contract rights, chattel paper, accounts, rentals, fees, charges, income and proceeds arising from or in connection with the use of the Equipment. The security interests granted in this Article 6 shall hereinafter be called collectively the "Additional Security".

ARTICLE 7. Vendee's Representations and Warranties. The Vendee hereby warrants and represents to the Vendor as follows:

7.1 The Vendee is a duly organized and existing corporation under the laws of the State of South Carolina and has the full power and authority to enter into, execute and deliver this Agreement and related documents and to perform each and all the matters and things provided for therein.

7.2 The execution and delivery of this Agreement and related documents have been authorized by all necessary corporate action on the part of the Vendee and each constitute legal, valid and binding obligations of the Vendee, enforceable against the Vendee in accordance with their terms.

7.3 The Vendee has filed all tax returns required by law to be filed and has paid all taxes, assessments and other governmental charges required to be paid by it.

7.4 There is no action, proceeding or investigation pending or threatened (or any basis therefor) against the Vendee which, either in any case or in the aggregate, will result in any material adverse change in the condition, business or prospects of the Vendee or in its properties or assets, or in any material liability on the part of the Vendee, or which questions the validity of this Agreement or any action taken or to be taken in connection herewith.

7.5 The Vendee is not in violation of any provision of its Charter, By-Laws, this Agreement, or, in any material

respect, any other document to which it is a party, and the execution, delivery and performance of this Agreement and related documents will not result in the violation of any such provision.

7.6 The Vendee is not in violation of any statute, ordinance, rule, regulation, judgment, decree, order, license or permit applicable to it or the activities proposed to be conducted by it which, either in any case, or in the aggregate, will result in any material adverse change in the condition, business or prospects of the Vendee or in its properties or assets, or in any material liability on the part of the Vendee, or which questions the validity of this Agreement or any action taken or to be taken in connection herewith, and no consent, approval or authorization by any governmental authority is required in connection with the execution, delivery and performance of this Agreement and related documents.

7.7 The Vendee has only one place of business in the Commonwealth of Pennsylvania and that is located at 1100 Centre Square East, 1500 Market Street, Philadelphia, Pennsylvania. Such place of business is the Vendee's principal place of business.

7.8 Except for the security interest granted by this Agreement, there are no other liens, encumbrances or security

interests which shall attach to the Equipment upon delivery of the same to the Vendee, and there are no other liens, encumbrances or security interests existing against the Additional Security.

7.9 This Agreement and any other assignments hereof have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's interest in and to the Equipment (including the rentals and other sums payable thereunder) and no filing, recording or deposit with any other federal, state or local government is necessary in order to protect the first lien ownership and first security interests of the Vendor in and to the Equipment in the United States of America; and the financing statements necessary to perfect the Vendor's first security interest in the Additional Security have each been duly recorded and filed with the Secretaries of the State of the Commonwealth of Pennsylvania and of the State of South Carolina and with the Prothonotary of Philadelphia County, and no other filing or recording is necessary to perfect the Vendor's first security interest in the Additional Security.

7.10 The Equipment is a type of boxcar which is qualified to receive incentive per diem payments as provided in

Part 1036, Subchapter A of Chapter X of Title 49 of the Code of Federal Regulations - Incentive Per Diem Charges on Boxcars.

7.11 All financial documentation provided by the Vendee in connection with this Agreement and the transactions contemplated hereby have been prepared in accordance with generally accepted accounting principles, consistently applied throughout the periods involved, and do present fairly the financial conditions of the Vendee as of the dates and the results of its operations for the periods for which the same have been furnished, and to the Vendee's knowledge, after reasonable investigation, all documentation so furnished is, as of the date thereof, accurate and correct in all material respects.

7.12 As of the date of this Agreement, there have been no changes which individually or in the aggregate have been materially adverse to the condition, financial or otherwise, of the Vendee as reflected in financial documentation provided by the Vendee to the Vendor, except changes in the ordinary course of business.

7.13 The Equipment will be used in interstate commerce and the interests of the Vender do not and will not subject the Vendor to the provisions of the Interstate Commerce

Act nor to the authority of the Interstate Commerce Commission.

ARTICLE 8. Taxes and Reports.

8.1 All payments to be made by the Vendee under this Agreement 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 taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, 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 Vendee assumes and agrees to pay on demand. The Vendee 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 or upon the Vendor

solely by reason of its ownership thereof 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 or Additional Security; provided, however, that the Vendee 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 title, property or rights of the Vendor in or to the Equipment or Additional Security or otherwise affect Vendors rights under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee 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 Vendee shall not be obligated to reimburse the Vendor for any Imposition 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 Vendee shall have approved the payment thereof.

8.2 The Vendee agrees to prepare and deliver to the

Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Vendor) any and all reports (other than tax returns) to be filed by the Vendor with any federal, state or other regulatory authority by reason of the ownership by the Lessor of the Equipment or the sale thereof to Vendee.

ARTICLE 9. Maintenance, Casualty Occurrences, and Insurance.

9.1 The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair and in compliance with the standards from time to time in effect under the Interchange Rules of the Association of American Railroads for use in interchange.

9.2 In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, or, in the opinion of the Vendee irreparably damaged (which includes any unit of Equipment damaged to such an extent that it can not be economically repaired to a state where it will earn ordinary revenues in the normal course of trade, giving consideration to equipment of like type and age), from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence cause the Vendor to be fully

informed in regard thereto. On the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a "Casualty Payment Date"), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this Article 9.2 shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendor will promptly furnish to the Vendee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendee may request, calculated as provided in Article 4 hereof (provided however that such recalculated schedule shall not give effect to any prepayment or prepayments theretofore made other than pursuant to a Casualty Occurrence as provided herein).

9.3 Upon payment by the Vendee to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Vendee without further transfer or action on the part of the

Vendor, except that the Vendor, if requested by the Vendee will execute and deliver to the Vendee, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee of such unit.

9.4 The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Conditional Sale Indebtedness thereof remaining unpaid with respect to the unit of Equipment on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made other than pursuant to a Casualty Occurrence as provided herein), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Conditional Sale Indebtedness in respect of Equipment made pursuant to Article 4 shall be deemed to be a payment on each unit of the Equipment in like proportion as the original price of such unit as set forth in Article 4 hereof bears to the aggregate original Conditional Sale Indebtedness.

9.5 The Vendee will maintain with respect to the Equipment, fire and all risk physical damage insurance in an amount equal to the total Casualty Value of all the Equipment

and public liability insurance for an amount of not less than \$10,000,000 for each person and \$10,000,000 for each occurrence, all such insurance containing such terms, and in such form, for such purposes and written by such companies as may be satisfactory to the Vendor, payable to the Vendor as its interest may appear or as additional insured, and the Vendee will deliver to the Vendor at its request evidence satisfactory to the Vendor that such insurance has been so procured and made payable to the Vendor. If the Vendee fails to maintain satisfactory insurance, the Vendor shall have the option to do so and the Vendee agrees to repay with interest at the rate of 13 3/4% per annum, all amounts so expended by the Vendor. The Vendee grants to the Vendor a power of attorney to the extent necessary to permit the Vendor to collect in the name of the Vendee all sums due under insurance policies insuring Equipment if the Vendee has failed to take such action within 10 days of a written request to the Vendee to do so.

ARTICLE 10. Reports and Inspection.

10.1 On or before March 30th in each year, commencing with the calendar year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31st the amount, description and number of all units of Equipment 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, including, but not limited to, the names, initials or other insignia at that time identifying each unit of Equipment and (b) 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 11 hereof have been preserved or replaced.

10.2 Within 90 days after the end of each of its fiscal years and within 45 days after the end of each of its first three fiscal quarters, the Vendee shall deliver to the Vendor consolidating and consolidated balance sheets as of the end of such year or quarter and a statement of income and consolidating and consolidated changes in financial position for the year or quarter then ended. The consolidating and consolidated annual statements shall be audited without exception as to scope and the consolidated statements reported upon by independent certified public accountants reasonably satisfactory to the Vendor; the quarterly consolidating and consolidated statements shall be unaudited but shall be certified by the chief financial officer of Vendee. Each such statement shall be accompanied by a certificate of the chief financial officer of Vendee stating that during the period from the beginning of the

period covered by the statement of income through the date of the certificate no default or event of default existed under this Agreement or, if an event of default does exist describing in reasonable detail the nature and extent thereof stating whether or not the same has been cured. Each such audited statement shall be accompanied by a letter from the independent certified public accountants reporting thereon stating whether or not the normal course of their audit disclosed any such default or events of default and, if so, describing the nature and extent thereof and stating whether or not the same has been cured.

10.3 The Vendor shall have the right, by its agents, to inspect the Equipment and the books and records of the Vendee, as well as all records of any lessees or sublessees of the Equipment, which are pertinent to the Equipment, at such reasonable times as the Vendor may request in writing during the term of this Agreement.

ARTICLE 11. Marking of Equipment.

11.1 The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Exhibit A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain plainly, dis-

tinctly, permanently and conspicuously marked on each side of each unit in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO DOCUMENTS RECORDED PURSUANT TO SECTION 20C OF THE INTERSTATE COMMERCE ACT," or other appropriate words designated 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 Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any unit of the Equipment to be changed 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 or filed, recorded or deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded or deposited.

11.2 Except as provided in the immediately preceding paragraph, the Vendee 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, the Equipment may be lettered

with the names or initials or other insignia customarily used by the Vendee or any of its affiliates or any other lessee or sublessee under any other lease permitted by Article 15.

ARTICLE 12. Compliance and Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every other lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' or users' 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, 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 title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the 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 the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 13. Possession and Use. So long as no event of default shall have occurred and no event which with the passage of time or nature or both would constitute such an event shall have occurred, the Vendee shall be entitled to the possession of the Equipment and shall also be entitled to (i) to the use of the Equipment by it or any affiliate upon lines of railroad owned or operated by it or any affiliate or upon lines of railroad over which the Vendee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Vendee or any such affiliate is regularly operated pursuant to contract, (ii) to permit the use of the Equipment upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, and (iii) to sublease any Equipment to other companies incorporated under the laws of any state of the United States or the District of Columbia, for use in connection with their operations, but only upon and subject to all the terms and conditions of this Agreement; provided, however, that the Vendee shall not assign or permit the assignment of any Equipment to service involving the regular operation and maintenance thereof outside the United States of America and provided, further that the Vendee may receive and retain compensation for such use from other railroads and companies so using any of the Units. Without the prior written consent of the Vendor, the Vendee

shall not assign or transfer its interest under this Agreement in the Equipment or any unit thereof except as provided in this Article 13.

ARTICLE 14. Prohibition Against Liens.

14.1 The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to part or all of the Equipment or the Additional Security, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or Additional Security or otherwise affect Vendor's rights under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment or Additional Security shall be secured by and under this Agreement and shall be repayable by Vendee upon demand.

14.2 The covenant set forth in Article 14.1 shall not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due

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

ARTICLE 15. Indemnities and Warranties.

15.1 The Vendee 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 expense in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to and a security interest in the Equipment and Additional Security, and the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, or any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. The covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the Conditional Sale Indebtedness, and the conveyance of security title to the

Equipment, as provided in Article 5, or the termination of this Agreement in any manner whatsoever.

15.2 The Vendee will bear the responsibility for 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 any unit of or all the Equipment.

15.3 The agreement of the parties relating to the Builder's warranty and material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Exhibit D attached hereto and made a part hereof.

ARTICLE 16. Assignments.

16.1 The Vendee will not (a) except as provided in Article 13, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the assignee or transferee assuming any of the obligations of the

Vendee under this Agreement.

16.2 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 Vendee, 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 Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties contained or referred to in Article 15, or relieve the Vendee from, any of the obligations of the Vendee under this Agreement.

16.3 Upon any such assignment, either the assignor or the assignee shall give written notice to the 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 the assignor's right, title and interest in and to the Equipment, 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 Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent

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

16.4 The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that this Agreement, or some of or all the rights of the Vendor hereunder, will be assigned to New England Merchants National Bank (the "Assignee") pursuant to an Agreement and Assignment of even date herewith. The Vendee hereby acknowledges notice of such assignment and receipt of a copy of the Agreement and Assignment to be executed by the Vendor and Assignee.

16.5 The Vendee expressly represents, for the purpose of assurance to the Assignee or any other person, firm or corporation who may from time to time acquire this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, agrees for the benefit of the Vendor that the rights of the Assignee or any other future assignee to the entire unpaid Conditional Sale Indebtedness or such part thereof as may be assigned, together with interest thereon, as well as any other rights under this Agreement which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect

to the Equipment or the manufacture, construction, delivery 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 Vendee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

16.6 The Vendee will (a) in connection with the settlement for the Equipment, deliver to the Assignee, at the time of the delivery of the Equipment, all documents required by the terms of such Agreement and Assignment to be delivered to the Assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, and (b) furnish to the Assignee such number of counterparts of any other certificate or paper required by the Vendor or the Assignee as may reasonably be requested. The Vendee agrees to provide the same information as may be reasonably requested for any subsequent assignee.

ARTICLE 17. Defaults.

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

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall

be due hereunder and such default shall continue for 10 days; or

(b) The Vendee shall, for more than 10 days after the Vendee shall have received written demand for performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provisions satisfactory to the Vendor for such compliance; or

(c) Any material representation or warranty of the Vendee in this Agreement shall prove to be incorrect in any material respect on the date as of which made; or

(d) Any proceeding shall be commenced by or against the Vendee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and the earlier of the following shall occur (i) such proceedings shall not have been dismissed, nullified, stayed or otherwise rendered ineffective within sixty (60) days after such proceedings shall have been commenced (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), or (ii) all the obligations of the Vendee under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or for their respective property in connection with any such proceedings, within 30 days after such appointments and in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers; or

(e) The 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 or if Vendee permits the dissolution of itself as an entity; or

(f) The Vendee shall be in default under any other agreement with respect to the borrowing of funds which default shall remain unremedied for a period of 10 days after written notice of such default from any party to such other agreement and the other party to such agreement shall have elected to accelerate the maturity date for the repayment of such borrowed funds;

then at any time after the occurrence of such an event of default the Vendor may declare (a "Declaration of Default") the entire unpaid balance of the Conditional Sale Indebtedness, 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 Conditional Sale Indebtedness and interest shall bear interest from the date of the Declaration of Default at the rate per annum specified in Article 4 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness of the Equipment so payable, with interest as aforesaid, and all costs and expenses payable hereunder, together with all costs and expenses of collection (including reasonable attorneys' fees) and all costs and expenses of repossessing and storing any Equipment as provided in Article 18, and the Vendor shall be entitled to col-

lect such judgment out of assets of the Vendee represented by the Equipment and the Additional Security and any income or proceeds derived from the Equipment and the Additional Security, and shall additionally be entitled to collect such judgment out of any and all other assets of the Vendee. The Vendee shall pay on demand all reasonable out-of-pocket collection, repossession and storage costs and expenses incurred by or on behalf of the Vendor. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

17.2 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 Vendee 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 or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the 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 18. Remedies.

18.1 At any time during the continuance of a

Declaration of Default, the Vendor may, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Vendee, any other lessee, sublessee or any other person and for such purpose may enter upon the premises of the Vendee 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 Vendee.

18.2 At any time during the Declaration of Default, the Vendor may also demand possession of the Equipment, and in the event of any such demand pursuant to this Agreement, Vendor shall designate a reasonable point or points on the lines or premises of any lines of railroad or other premises approved by the Vendor for the delivery of the Equipment to the Vendor, and the Vendee shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points and shall there deliver the Equipment or cause it to be

delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises which, or the use of which, are owned or controlled by the Vendee (directly or indirectly) or on any lines of railroad or other premises approved by the Vendor and reasonably convenient to the Vendee for a period not exceeding six months. The Vendee agrees either to provide the facilities necessary for such storage or to pay all costs and expenses of such storage, and that such storage shall be at no cost or expense to the Vendor.

18.3 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 Vendee requiring specific performance hereof. The Vendee 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. Any liability of the Vendee hereunder is limited with respect to documented out-of-pocket expenses with respect to the repossession and storage of the Equipment as provided in Article 17.

18.4 At any time during the continuance of a

Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in full satisfaction of the Conditional Sale Indebtedness and any interest due thereon 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 Vendee by telegram or registered mail, addressed as provided in Article 23, 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 Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, 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 Conditional Sale Indebtedness of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, including reasonable attorneys' fees and all expenses of the Vendor on retaking possession of, removing, storing and holding the Equipment, then in such event absolute

right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee, provided further, that if the Vendee objects 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 18.

18.5 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 Vendee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, or any other party claiming from, through or under the Vendee 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 Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness 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 Vendee. The proceeds of such sale or other disposition, less the reasonable attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

18.6 Any sale under this Article 18 may be held or conducted 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, so long as such sale shall be in a commercially reasonable manner. The Vendee shall be given written notice of

such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 23. If such sale shall be a private sale, it shall be subject to the right of the Vendee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Vendee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

18.7 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 Vendee shall not otherwise alter or affect the Vendor's rights or the Vendee'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 Vendee's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

18.8 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 Vendee shall pay the amount of such deficiency upon demand and if the Vendee shall fail to pay such amount, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee, and collect upon said judgment from any and all assets of the Vendee in the same manner as any other general obligator of the Vendee. 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 Vendee to the extent of its

interest therein.

18.9 The Vendee 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 reasonable attorneys' fees, and the amount thereof shall be included in such judgment, and shall be collectible from all assets of the Vendee.

ARTICLE 19. Applicable State Laws.

19.1 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 Vendee 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.

19.2 Except as otherwise provided in this Agreement, the Vendee, 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 one or more units 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 20. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; the Vendee will also cause any financing statement with respect to this Agreement and the assignment hereof to be filed and recorded in the form and manner required by law in all offices and places necessary to perfect the lien on and security interest in the Equipment and Additional Security; and the Vendee 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 information required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to and security interest in the Equipment, its security interest in the Additional Security and its rights under this Agreement or for the purpose of carrying out the intention of this

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

ARTICLE 21. Payment of Expenses. The Vendee will pay all reasonable costs and expenses of New England Merchants National Bank (the assignee of the Vendor under this Agreement) incident to this Agreement and any instrument supplemental or related to this Agreement, including all filing fees and fees and expenses of counsel for the New England Merchants National Bank.

ARTICLE 22. Article Headings; Article References; Effect and Modification of Agreement.

22.1 All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. References to "Articles" mean articles of this Agreement.

22.2 This Agreement, including the Exhibits hereto, and any assignment thereof exclusively and completely state the rights of the Vendor and the Vendee 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 representatives of the Vendor and the Vendee.

ARTICLE 23. Notice. Any notice under this Agreement to any of the parties designated below shall be deemed to be properly served if delivered or mailed in the United States by certified or registered mail to it at its chief place of business at the following specified addresses:

(a) to the Vendee, at

1100 Centre Square East  
1500 Market Street  
Philadelphia, Pennsylvania

(b) To the Vendor, or any assignee of the Vendor upon assignment, at such address as may have been furnished in writing to the Vendee, by the Vendor or such assignee (New England Merchants National Bank, as an assignee of the Vendor, hereby giving notice of its address as 28 State Street, Boston, Massachusetts 02109, Attention: Equipment Financing Department)

or at such other address as may have been furnished in writing by such party to the other parties to 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 Commonwealth of Massachusetts; 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 25. Execution. This Agreement may be executed in any number of counterparts numbered consecutively in ascending order, 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, but only the counterpart that is labeled "Counterpart No. 1" shall be deemed to be the original for purposes of perfection of a security interest and shall be the only counterpart which may be transferred and given to transfer the rights of the Vendor hereunder. Although this Agreement is dated as of the date first above written, 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 acknowledgements hereto annexed.

IN WITNESS WHEREOF the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

NATIONAL RAILWAY UTILIZATION  
CORPORATION -- VENDEE

By

Title

WHITTAKER CORPORATION, BERWICK  
FORGE AND FABRICATING DIVISION  
VENDOR

By

Title

City of Phila. )  
County of Phila. ) SS:

I HEREBY CERTIFY, that on this 28<sup>th</sup> day of December, 1978, before the subscriber, a Notary Public in and for said City and State personally appeared John Maricatti, who, being by me duly sworn, says that he is a Sec VP of National Railway Utilization Corp., 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.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this 28<sup>th</sup> day of December, 1978.

[Notarial Seal]

My Commission expires:

Darlene Marquette  
Notary Public  
DARLENE MARQUETTE  
Notary Public, Phila., Phila. Co.  
My Commission Expires Sept. 13, 1982

City of Phila. )  
County of Phila. ) SS:

I HEREBY CERTIFY, that on this 28<sup>th</sup> day of December, 1978, before the subscriber, a Notary Public in and for said City and State personally appeared Peter C. Peper who,

being by me duly sworn, says that he is a *President & General*  
*Manager (acting)* of *Yorwick Drug &*  
*Substituting Co.*, 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.

IN TESTIMONY WHEREOF, I have hereunto set my hand and  
official seal this *25<sup>th</sup>* day of *December*, 1978.

*Dorlene Marquette*  
Notary Public

[Notarial Seal]

My Commission expires:

*DORLENE MARQUETTE*  
Notary Public, Delta, Ohio Co.  
My Commission Expires 03/22/1982

EXHIBIT A  
TO  
CONDITIONAL SALE AGREEMENT

<i>pcB</i> <u>Type</u>	<u>Quantity</u>	Railroad Marketing Numbers (Both Inclusive)	<i>pcB</i> Unit Purchase Price (See Article 4)	Total Purchase Price	Estimated Time of Delivery
77 ton, 50' 6" Class XM boxcars	56	NSL150494- 150549	\$37,337	\$2,090,872	Prior to Dec. 31 1978

EXHIBIT B  
TO  
CONDITIONAL SALE AGREEMENT

BUILDER'S SPECIFICATIONS

50 foot 6 inch 70 ton single sheath outside stake  
boxcar plate "C" with rigid underframe

EXHIBIT C

CLOSING CERTIFICATE

THIS CLOSING CERTIFICATE dated as of December 29, 1978, by and between WHITTAKER CORPORATION, BERWICK FORGE AND FABRICATING DIVISION (the "Builder") and NATIONAL RAILWAY UTILIZATION CORPORATION (the "Vendee") forms a part of that certain Conditional Sale Agreement dated as of December 29, 1978 by and between the Builder and the Vendee.

1. Delivery of Equipment. The Builder hereby acknowledges delivery of the Equipment bearing the markings NSL1504<sup>94</sup>~~83~~ through and including NSL150549 in accordance with the terms and conditions of the Conditional Sale Agreement dated as of December 29, 1978 by and between the Builder and the Vendee.

2. Receipt of Equipment. The Vendee hereby acknowledges receipt of the Equipment bearing the markings NSL150494 through and including NSL150549 and hereby acknowledge that all terms, conditions, representations, warranties, covenants and agreements contained in the Agreement with respect to, or made by, Vendee continue to be true and are in full force and effect as of the date of this Closing Certificate, and further acknowledges that all such terms,

*PCB*  
*[Signature]*

conditions, representations, warranties, covenants and agreements apply with full force and effect to the Equipment delivered and acknowledged pursuant to this Closing Certificate. The Vendee agrees to make payment for such Equipment as provided in Article 4 of the Agreement.

IN WITNESS WHEREOF, parties hereto have executed or caused this instrument to be executed and sealed all as of the day and year first above written.



WHITTAKER CORPORATION, BERWICK  
FORGE AND FABRICATING DIVISION

[Corporate Seal]

By: Peter C. Bayer

ATTEST:

Title: President - General Manager  
(acting)

Peter C. Bayer

NATIONAL RAILWAY UTILIZATION  
CORPORATION

[Corporate Seal]

By: Greg V. Messeri

ATTEST:

Title: Greg V. Messeri

Charles P. Trubee

## EXHIBIT D

### Builder's Patent Title Indemnities and Warranties of Material and Workmanship

Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder 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 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 Builder warrants that when delivered, the Equipment will incorporate all of the features set forth in the Specifications (provided, however, in the event that the Builder shall be unable to secure any specified materials for any reason beyond Builder's control, the Specifications shall be deemed to be modified so as to permit substitutions not materially adversely affecting the Equipment), and (except as

to items furnished or supplied by Vendee, or items specified by Vendee which are not manufactured, supplied or performed by the Builder) will be free from defects in material and workmanship under normal use and service. The Builder's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such Equipment which shall, within one (1) year after the Builder shall have made delivery of such defective Equipment, be returned to such place as the Builder shall designate with transportation charges prepaid, and which the Builder's examination shall disclose to the Builder reasonable satisfaction to have been defective in normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ~~EXTENDING BEYOND THE DESCRIPTION CONTAINED IN EXHIBIT A TO THE~~ *PCB* ~~CONDITIONAL SALE AGREEMENT,~~ *PCB* AND OF ALL OTHER OBLIGATIONS AND *9* LIABILITIES OF THE BUILDER, AND THE BUILDER SHALL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY DEFECTS IN MATERIAL OR WORKMANSHIP.