



LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40201 • TELEPHONE 587-1121

June 18, 1973

LAW DEPARTMENT

WANDALEEN POYNTER  
ATTORNEY

Mr. Robert L. Oswald, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

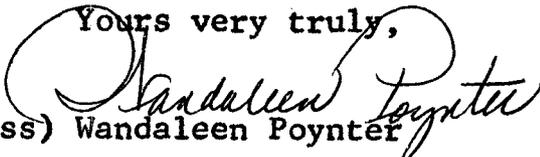
Dear Mr. Oswald:

On May 31, 1973, Louisville and Nashville Railroad Company filed with the Commission, pursuant to Section 20c of the Interstate Commerce Act, fully executed copies of a Conditional Sale Agreement and an Agreement and Assignment, both dated as of March 1, 1973. The file stamp on L&N's copies of the documents, which are common-bound, indicates a recordation time of 9:50 AM and the assignation of recordation number 7040.

An error in Schedule B to the Conditional Sale Agreement was discovered subsequent to the date the documents were filed and recorded. The tenth TTX road number from the bottom of column six is incorrectly listed as 964602. The listing in column 6 should be corrected from 964602 to 964702. The 964602 listing in column three is correct.

Would you please direct that this correction is made and acknowledge such on the enclosed copy of this letter.

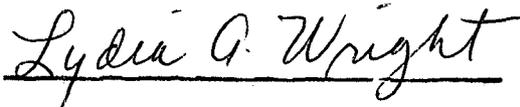
Yours very truly,

  
(Miss) Wandaleen Poynter

WP/k

This is to acknowledge that the road number correction requested in this letter was made this 19<sup>th</sup> day of June, 1973.

By



**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**1973 RAILROAD EQUIPMENT FINANCING**

7040

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

MAY 31 1973 -9 50 AM

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INTERSTATE COMMERCE COMMISSION

**CONDITIONAL SALE AGREEMENT**

~~dated as of April 14, 1973~~

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## CONDITIONAL SALE AGREEMENT

~~Revised Draft, April 14, 1973~~

**THIS AGREEMENT**, dated as of March 1, 1973, by and among PORTEC INC., a corporation of the State of Delaware, (hereinafter called "Vendor"), LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a corporation of the Commonwealth of Kentucky (hereinafter called "Vendee"), and TRAILER TRAIN COMPANY, a corporation of the State of Delaware, (hereinafter called "TTX"),

## WITNESSETH:

WHEREAS, TTX has or will have two hundred thirty-five (235) flat cars and has agreed to furnish said cars to the Vendee for its use; and

WHEREAS, Vendee proposes to have said flat cars equipped with racks for the transportation of automobiles thereon; and

WHEREAS, TTX has consented to the installation of said racks on such flat cars; and

WHEREAS, the Vendor has and hereby does agree to construct and apply certain of the racks to said flat cars.

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

1. **CONSTRUCTION, SALE AND DELIVERY.** The Vendor hereby agrees to construct, sell, install and deliver to the Vendee, and the Vendee hereby agrees to buy from the Vendor and to accept delivery and pay for, as hereinafter provided, the automobile racks described as follows; being hereinafter sometimes referred to as the "racks":

Lot No. 1: Sixty-three (63) tri-level unscreened auto racks to be constructed and installed on flat cars bearing TTX's road numbers listed on Schedule A hereto, and

Lot No. 2: One hundred seventy (170) bi-level screened auto racks and two (2) bi-level unscreened auto racks to be constructed and installed on flat cars bearing TTX's road numbers listed on Schedule B hereto.

Vendor represents and warrants that the racks constructed and installed by it will be of first-class materials and workmanship and that

the racks and all component parts will conform to all Department of Transportation and Interstate Commerce Commission requirements and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to such racks.

Vendor agrees to deliver the racks to be constructed and installed by it, free of all liens, encumbrances and claims of any nature by or in favor of any person or party and subject only to the reservation of title thereto by the Vendor in accordance with the provisions hereof.

The racks to be constructed and installed will be delivered by Portec Inc. to an authorized agent of the Vendee at said Vendor's plant. Delivery of said racks is to begin about March 1, 1973 and is to be completed on or about May 15, 1973.

Construction, installation and delivery of the racks shall be subject to rescheduling of shop space and delays due to strikes, labor troubles, acts of God, Governmental acts and regulation, war or war conditions, riots or civil commotion, sabotage, fires, floods, explosions or other accidents, or to delays of carriers or of sub-contractors or in the receipt of materials, or to any other cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Vendor's reasonable control.

Notwithstanding the preceding paragraph, and in accordance with Section 2(C) hereof, any rack not constructed, installed, delivered, accepted and settled for on or before July 15, 1973, such date being hereinafter called the Cut-Off Date, shall be excluded from this Agreement and not included in the term "racks" as used in this Agreement.

Vendee shall arrange for inspection and acceptance of each of the racks by a duly authorized agent at the place of delivery and shall execute in quadruplicate a certificate of inspection and acceptance of such racks. An original of such certificate shall be furnished to the Vendor which certificate shall also state that the racks conform to all the requirements of this Agreement. Each such certificate with respect to the racks covered thereby shall be final and conclusive evidence that such racks conform in workmanship, material, construction and in all other respects to the requirements and provisions of this Agreement.

## 2. PAYMENT OF PURCHASE PRICE.

(A) The estimated purchase price for each rack in Lots Nos. 1 and 2 is as follows:

Lot No. 1 .....	\$7,200.00
Lot No. 2 .....	6,600.00

The aggregate estimated purchase price of all two hundred thirty-five (235) racks is \$1,588,800. The said estimated price is subject to possible increase or reduction depending upon variations in the cost of labor and the amount of materials needed during reconstruction. The full and final purchase price, however, shall be stated in invoices to be rendered upon delivery of the racks.

Conditioned only upon the receipt and acceptance of said racks which may be conclusively presumed from the execution of the certificate of inspection and acceptance previously referred to, the Vendee acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay to the Vendor, at such place as may be designated by the Vendor, the full purchase price of the racks so accepted, as hereinabove provided, in the following manner:

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

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

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

As to each rack in Lot No. 1, Seven Thousand Two Hundred Dollars (\$7,200.00) of the full purchase price, being the deferred purchase price, shall be paid in twenty (20) equal consecutive quarterly installments of \$360.00 each.

As to each rack in Lot No. 2, Six Thousand Six Hundred Dollars (\$6,600.00) of the full purchase price, being the deferred purchase price, shall be paid in twenty (20) equal consecutive quarterly installments of \$330.00 each.

In the event the purchase price of any of the racks shall be less than the deferred purchase price therefor (such difference hereinafter called the "excess"), the deferred purchase price of such rack shall be reduced by such excess and thereupon the purchase price shall become the deferred purchase price thereof and all installments with respect to such deferred purchase price shall be ratably reduced.

The first quarterly installment in respect to each rack shall be due and payable on October 15, 1973, and subsequent installments shall become due and payable on the fifteenth day of January, April, July and October of each year thereafter to and including July 15, 1978.

(B) With each such quarterly installment of the deferred purchase price, there shall be due and payable interest at the base rate of First National City Bank plus  $\frac{1}{4}$  of 1% per annum on the unpaid principal of the deferred purchase price of each rack until the entire deferred purchase price of such racks shall have been paid in full. From the date of each settlement date to July 15, 1973, interest shall be due and payable on the deferred purchase price of the racks which have been settled for at the base rate of First National City Bank, plus  $\frac{1}{4}$  of 1% per annum, in effect on the initial settlement date.

For the purposes hereof, the base rate of First National City Bank is the base rate of interest charged by said Bank of ninety-day loans to

substantial and responsible borrowers. In the event that, from time to time, the base rate shall be changed by said bank after the first payment of interest, all subsequent quarterly payments of interest shall be calculated based on the base rate of First National City Bank in effect on the due date of the immediately preceding quarterly interest payment.

All interest provided for in this Agreement shall be calculated on the basis of a 365-day year.

The first payment of interest shall be due and payable on July 15, 1973, and shall cover interest for each rack settled for under the terms of this Agreement from such Settlement Date to said payment date.

If payment of any installment, or portion thereof, of the deferred purchase price of any rack, or of interest thereon, determined as hereinabove provided, be made after its due date, interest thereon shall be paid (to the extent permitted by law) at the base rate of First National City Bank plus 1% per annum from said due date until payment be made therefor.

(C) It is mutually agreed that, in the event delivery, acceptance and settlement for any of the racks is delayed beyond July 15, 1973, any such rack shall be excluded from the terms and provisions of this Agreement. Any such rack or racks so excluded from the terms and provisions of this Agreement shall not be included in the term "racks" as used in this Agreement. In the event of any such exclusion, an agreement supplemental hereto shall be executed limiting this Agreement to the racks delivered, accepted and settled for under this Agreement.

(D) The Vendee shall have the privilege of prepaying all or any part of the installments on the deferred purchase price at any time.

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

(F) Whenever any payment to be made under this Agreement shall be stated to be due on a date which falls on a Saturday, Sunday or a holiday under the laws of the place of payment, such payment shall be made on the next succeeding business day.

3. TITLE TO THE RACKS. Vendor shall and hereby does retain the full legal title to, and property in, all of the racks constructed and installed by it until the Vendee shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Vendee, with respect to any such rack, notwithstanding the delivery of such rack or racks to, and the right to the use thereof, by the Vendee as herein provided.

TTX acknowledges that it will furnish to the Vendee two hundred thirty-five (235) flat cars for its use and hereby consents to the installation of the auto racks described in Section 1 hereof on said flat cars. TTX further covenants and agrees that the auto racks installed on its flat cars do not constitute an accession to any interest it has in or to the flat cars and that such racks are free of all claims, liens, encumbrances or security interests of any nature which might now or hereafter be asserted by TTX.

The Vendee covenants and agrees that it will cause the racks to be kept numbered with the assigned car number and to be kept plainly marked by "plating" or stencilling upon both sides of each rack with the name of the Vendor or its assignee, in letters not less than one-half inch in height followed by the word "Owner" or "Owners" or other appropriate words designated by the Vendor, and the Vendee agrees that it will not place any rack in operation or exercise any control or dominion over any rack until it shall have been so marked. Vendee and TTX covenant and agree that neither will change the number assigned to or placed upon any rack except with the consent of the Vendor and in accordance with a statement of new numbers previously filed with the Vendor by the Vendee and TTX.

The Vendee and TTX agree not to place or permit to be placed upon any rack any marks, signs or words which might be interpreted as a claim of ownership of the rack by any person, firm or corporation other than the Vendor; except, however, Vendee may cause each rack to be lettered with the names or initials or other insignia customarily used by the Vendee or its affiliates on racks of the same or a similar type for convenience of identification of the interests of the Vendee.

When and only when the Vendor has been paid the full purchase price for all of the racks, together with interest and any and all other

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

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

Vendee shall also pay promptly all taxes, assessments and governmental charges which from time to time may be imposed upon the racks, or the earnings arising therefrom, or the operation thereof, or upon Vendor by reason of ownership thereof, by any government or any country, state or political subdivision thereof in which the racks may be located or which shall have jurisdiction over the racks or any part of them, and the Vendee agrees at all times to keep the racks free and clear of all liens and encumbrances whatsoever, other than the lien created by this Agreement and the lien of taxes not yet due

or payable; *provided, however*, that Vendee shall not be required to pay any tax, assessment or other governmental charge so long as the Vendee shall contest in good faith and by appropriate legal proceedings the validity of such tax, assessment or other governmental charge and the non-payment thereof does not, in the opinion of the Vendor thereof, adversely affect the property or rights of the Vendor hereunder.

5. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Vendee shall comply in all respects with all laws of the United States of America and of the states in or through which the racks may be operated, covering the use, operation or maintenance of the racks, with the rules of the Association of American Railroads, with the lawful rules, with respect to the racks, of the Department of Transportation, Interstate Commerce Commission, and of every other legislative, administrative or judicial body exercising any power or jurisdiction over the racks, and in the event that said laws or rules require any alterations of any of the racks, or any additional equipment or appliances thereon, Vendee shall conform therewith at its own expense and shall maintain the racks in proper condition for operation under such laws and rules during the life of this Agreement and any supplement thereto; *provided, however*, that Vendee shall have the right to contest in good faith and by appropriate legal proceedings any such laws or rules so long as such contest does not, in the opinion of the Vendor, adversely affect the property or rights of such Vendor hereunder.

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

The Vendee shall promptly replace the racks, or any of them, or any parts thereof, at its own cost, except as otherwise herein provided, if any racks shall be worn out, lost, destroyed, irreparably damaged or become obsolete in that the rack is detached with the intent that it shall remain permanently detached from any flat car during the continuance of this Agreement (any of said events being hereinafter called "Casualty Occurrences") with standard gauge rolling stock equal in value to the depreciated value of the racks that have become subject to

Casualty Occurrences, and shall promptly notify the Vendor of such replacement by a statement of an officer of the Vendee setting forth the description and road numbers of the rolling stock to be used in replacement, together with (a) an opinion of counsel for the Vendee that the rolling stock used in replacement are equal in value to the depreciated value of the racks so replaced, that title to the rolling stock used in such replacement has been transferred by the Vendor free and clear of all liens of every kind, and that a supplemental agreement subjecting said rolling stock to the provisions of the Agreement has been duly filed, recorded, or filed for record pursuant to the provisions of Section 13 of this Agreement, and (b) an executed counterpart of a bill of sale transferring title to such rolling stock to the Vendor. Any and all such replacements shall be subject to all of the terms and conditions of this Agreement as though part of the original equipment delivered hereunder. The Vendee shall cause any such rolling stock acquired in replacement to be plainly marked as provided for in Section 3 of this Agreement.

At the election of the Vendee, and in lieu of such replacement as mentioned, Vendee shall pay to the Vendor on July 15 in each year commencing July 15, 1974, a sum equal to the aggregate unpaid balance of the deferred purchase price of all such racks that may have been subjected to Casualty Occurrences, together with interest accrued on such unpaid balance to the date of payment; *provided, however*, that from time to time in any year commencing on July 15 when the aggregate unpaid balance of the purchase price of such racks that may have been subjected to Casualty Occurrences (exclusive of racks which have been replaced or with respect to which payment shall have been made pursuant to this Section 6) shall exceed \$100,000, Vendee, within 30 days of such event, shall pay to the Vendor a sum equal to the aggregate unpaid balance of the deferred purchase price of such racks, together with interest accrued on such unpaid balance to the date of payment. Upon any payment pursuant to this paragraph, all succeeding semi-annual installments shall be reduced pro rata.

Notwithstanding the provisions of the two preceding paragraphs of this Section 6, the Vendor may, if requested by the Vendee so to do, waive the requirements provided therein for replacing such rack or racks or payment of a sum equal to the then unpaid balance of the

deferred purchase price applicable to such rack or racks. Any such waiver, however, shall apply only to the specific instance for which the same is given.

Should any such rack or racks suffering a Casualty Occurrence be replaced, or if payment be made therefor, or if waiver of such requirements for either payment or replacement be given, all as in this Section hereinabove provided, the Vendor shall, upon written request by the Vendee, execute an agreement of release, or other suitable instrument, relinquishing any interest which Vendor may hold in or to the said rack or racks suffering such a Casualty Occurrence.

The Vendee agrees to furnish to the Vendor upon request, in any event on or before March 31, in each year, as long as this Agreement shall be in force, an accurate inventory of the racks in actual service, the condition of the racks and the numbers and the description of such racks as may have suffered Casualty Occurrences as of the preceding December 31. The Vendee shall promptly and fully inform the Vendor of any rack suffering a Casualty Occurrence.

The Vendor shall have the right, but shall be under no obligation, to inspect the racks at any reasonable time or times during the continuance of this Agreement.

7. INDEMNITIES AND GUARANTIES. The Vendee hereby covenants and agrees to save, indemnify and keep harmless the Vendor, their successors and assigns, from and against all losses, damages, injuries, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor, its successors and assigns, of title to the racks or out of the use or operation of the racks during the life of this Agreement, except as herein provided. With respect to such losses, damages, injuries, claims and demands, said covenant of indemnity shall continue in full force and effect for the benefit of the Vendor, its successors and assigns, notwithstanding the full payment of the purchase price and the conveyance of the racks, as provided in Section 3 hereof, or the termination of this Agreement in any manner whatsoever, or damage to or the loss or destruction of any rack or racks.

Vendor warrants that the racks to be constructed by it are of the kind and quality described in Section 1 hereto and are suitable for the

ordinary purposes for which such racks are used and warrants such racks to be free from defects in material and workmanship at the time of delivery. Vendor agrees to correct any defects in such racks constructed by it which examination shall disclose to its satisfaction to be defective as to material and workmanship; provided such defective racks are returned to the Vendor within one year after their delivery to the Vendee for repair or replacement, F.O.B. Vendor's factory, and such correction shall constitute fulfillment of such Vendor's obligation with respect to such defects under this warranty. The foregoing warranties are exclusive and are in lieu of all other warranties of merchantability, or of fitness for purpose, or of any other kind, express or implied; and in no event shall Vendor be liable for consequential damages.

Vendor further agrees that neither the inspection nor the acceptance of any of the racks under this Agreement shall be deemed a waiver or modification by the Vendee of any of its rights under this Section.

8. PATENT INDEMNITIES. Vendor shall defend any suit or proceeding brought against the Vendee so far as the same is based upon a claim that the racks furnished by it under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at the Vendor's expense) for the defense of the same, and said Vendor shall pay all damages and costs awarded therein against the Vendee. In case any rack, or any part thereof, is in such suit held to constitute infringement and the use of such rack or part thereof is enjoined, said Vendor shall, at its option and at its expense, either procure for the Vendee the right to continue using such rack or part thereof, or replace the same with a non-infringing rack or modify it so that it becomes non-infringing, or remove such rack from said flat car and refund the purchase price thereof. If the purchase price is so refunded, such refund shall be made to the assignee of said Vendor's rights under this Agreement if this Agreement has been so assigned, which refund shall be applied in like manner as payments under Section 6 of this Agreement in respect to racks which have suffered a Casualty Occurrence.

The Vendee agrees to indemnify, protect and hold harmless the Vendor and its successors and assigns, from and against any and all

liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor, its successors and assigns, because of the use in or about the construction or operation of any of the racks of any design, article or material infringing or claimed to infringe on any patent or other rights.

9. ASSIGNMENT OF INTEREST OF VENDOR. This Agreement, all or any of the rights of the Vendor under this Agreement and any supplement hereto, including the right to receive the full purchase price or any deferred portion of the full purchase price of the cars, and their title and ownership in and to the racks or any thereof, may be assigned by the Vendor and reassigned by any assignee at any time and from time to time *provided, however*, no such assignment shall relieve Vendee of its obligations to Vendor or their successors or assigns and no such assignment shall relieve the Vendor from any obligation as to construction, installation, delivery and warranty of the racks hereunder.

In the event of any such assignment, subsequent to the first assignment hereof, the assignor shall give written notice to the Vendee, together with a counterpart or certified copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Vendor's right, title and interest in and to the racks and each and every part thereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement and any supplements hereto shall, to the extent so assigned, be made to the assignee or upon its written order.

In the event of any such assignment prior to the delivery of the first rack, the Vendee will deliver to such assignee, an opinion of counsel for the Vendee, dated as of each Settlement Date, in form acceptable to such assignee to the effect that the Vendee is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; that this Agreement is valid, effective and binding upon the Vendee, its suc-

cessor and assigns, and is enforceable against it in accordance with its terms; that the execution of this Agreement on behalf of the Vendee is within the corporate powers of the Vendee, and this Agreement has been duly authorized, executed and delivered by the Vendee; that this Agreement and the said assignment thereof have been filed, recorded or filed for record as specified in Section 14 of this Agreement and that no other filing, registering or recording in any other office or agency is required to protect the rights of the Vendor and the Vendor's assignee; that no consent or approval of the Interstate Commerce Commission or of any other governmental or supervisory agency, including any state regulatory agency, is required with respect to the execution and delivery of, or the performance of the terms of, this Agreement or the assignment thereof; and that title to each of the racks in the Group being settled for on such Settlement Date, at the time each such rack was delivered to the Vendee, was validly vested in such assignee, free of all claims, liens and encumbrances, except only the rights of the Vendee hereunder.

The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of all or any of the rights of the Vendor under this Agreement and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment by the Vendor of all or any of the rights of the Vendor hereunder, the rights of the assignee to the entire unpaid 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 suit or action or to any defense, set-off, counterclaim or recoupment whatsoever, arising out of any breach of any obligation of Vendor in respect of the racks to be constructed by it, or the installation and delivery thereof, or warranty with respect thereto, or in respect of any indemnity herein contained nor subject to any suit or action or to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Vendee by the Vendor. Any and all such obligations, however arising, shall be and remain enforceable by the Vendee against and only against the Vendor. The provisions of this paragraph may be relied upon by any such assignee as a continuing offer by the Vendee to waive any remedies which it might otherwise have to enforce and any and all such obligations of Vendor

against such assignee, which offer may be accepted by such assignee by payment to the assignors of the consideration for the purchase and assignment of this Agreement or of some or all of the rights hereunder.

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

To the extent that the rights, title and interests of the Vendor hereunder shall have been assigned and/or reassigned, the term "Vendor" with respect to such rights, titles and interests shall mean such assignee or assignees.

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

The Vendee hereby covenants and agrees that without the written consent of the Vendor it will not further pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said racks or assign or transfer this Agreement or any if its rights hereunder, or transfer or lease the racks or any of them.

The term "Vendee" whenever used in this Agreement means, before any assignment of the rights of the Vendee hereunder as hereinabove provided, the Vendee, its successors and assigns, and after

any such assignment shall include the Vendee, its successors and assigns, and any assignee thereof, except only insofar as the Vendor may specifically, in writing, relieve the Vendee or any such assignee from the obligations hereof.

#### 11. DEFAULTS AND REMEDIES.

##### In case Vendee

(a) shall make default in the payment of any portion of the purchase price including any installment of the deferred purchase price of the racks, or of any interest thereon, as herein provided for, and shall remain in default for more than ten (10) business days after such payment shall have become due and payable; or

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

(c) shall fail or refuse, for more than thirty (30) days after Vendor shall have demanded in writing the performance thereof, to comply with any other of the terms and covenants of this Agreement to be kept and performed by Vendee or to make provision satisfactory to Vendor for such compliance; or

(d) shall file, or the creditors of the Vendee shall file, any petition for reorganization or debt adjustment affecting the obligations of the Vendee hereunder under Section 77 of the Bankruptcy Act or under any amendment or revision thereof or under any other provision of the Bankruptcy Act as now or

hereafter existing or under any other statute, or shall make any voluntary assignment or transfer of the Vendee's interest in and under this Agreement, or any involuntary transfer of such interest shall be made by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process or otherwise (unless such petition shall be dismissed or such assignment, transfer, decree or process shall be nullified, stayed or otherwise rendered ineffective within thirty (30) days from the filing or other effective date thereof, or unless any such receiver or trustee shall within thirty (30) days from the date of his appointment adopt this Agreement pursuant to due authority of the court appointing him);

then, in any such case (in this Agreement sometimes called "events of default") Vendor at its option may by notice in writing delivered to Vendee, and upon compliance with any mandatory requirement of law applicable to the action to be taken, declare to be due and payable forthwith the entire unpaid balance of the purchase price of the racks; and thereupon the entire amount of such purchase price shall become and shall be due and payable immediately without further demand together with interest thereon to such date of default at the rates set out in Section 2(B) of this agreement, and thereafter interest shall be payable by Vendee upon any portion thereof overdue, during such time as it shall remain overdue, at the base rate of First National City Bank plus 1% per annum; and Vendor shall thereupon be entitled to recover judgment for the entire amount so payable by Vendee with interest thereon at said rates and to collect such judgment out of any property of Vendee wherever situated. Any and all money so collected by Vendor shall be applied by it as hereinafter provided.

Vendee covenants that, in case of the happening of any such event of default, Vendor or its agents, after making the declaration previously provided for in this Section, and upon such further notice as may be required for compliance with any mandatory requirement of law applicable to the action to be taken, may also take possession of all or any of the racks wherever they may be found, and for that purpose enter upon the railroads and premises operated by Vendee, or by any other corporation under a lease from Vendee, and withdraw the same from

said railroads and premises, retaining all payments which up to that time may have been made hereunder for the racks and otherwise, and shall be entitled to collect, receive and retain all charges of any kind earned by the racks or any thereof, and may lease the racks or any thereof, or, with or without retaking possession thereof (but only after making the declaration provided for in this Section), may sell the same or any thereof as far as may be necessary to realize the balance remaining to be paid by Vendee under this Agreement, free from any and all claims of Vendee at law or in equity, in one lot and as an entirety or in separate lots, at public or private sale, after at least fifteen (15) days' prior written notice to the Vendee, and with or without any other notice or advertisement, for cash or upon credit, in their discretion, and may otherwise proceed to enforce their rights in the manner provided by this Agreement.

In case Vendor shall rightfully demand possession of the racks in pursuance of this Agreement and shall reasonably designate a point or points upon the railroads or premises operated by Vendee for delivery of the racks to them, Vendee shall at its own expense, forthwith and in the usual manner, cause the racks to be moved to such point or points on the lines of railroad of Vendee as shall be designated by Vendor and shall there deliver the same or cause them to be delivered to Vendor; or, at the option of Vendor, Vendor may keep the racks on any of the lines of railroad or premises of the Vendee until Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose Vendee agrees to furnish without charge for rent or storage the necessary facilities at any point or points thereon selected by Vendor reasonably convenient to Vendee. It is hereby expressly covenanted and agreed that the covenants in this Section contained are of the essence of this Agreement and that upon application to any court having jurisdiction in the premises Vendor shall be entitled to a decree against Vendee requiring the specific performance thereof. The Vendee and TTX hereby expressly waive any and all claims against the Vendor and their agents for damages of whatever nature in connection with any retaking of any rack in any reasonable manner.

In the event of a sale or other disposition of the racks or any of them as herein provided, it shall not be necessary to have the racks or any of them present at such place or places where such sale or other

disposition may be made. At any such sale or sales or other disposition, Vendor, to the extent not prohibited by any requirements of law, may become the purchasers of the racks or any of them, and in settlement for such purchase price shall be entitled to have credited on account thereof the sums then due to the Vendor from the Vendee under this Agreement.

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

Upon taking possession or lease or sale of the racks, or any of them, Vendee shall cease to have any rights or remedies in respect of the racks under this Agreement, and all such rights and remedies shall be deemed henceforth to have been waived and surrendered by Vendee, and no payments theretofore made by Vendee for the racks or any of them shall, in case of the happening of any such event of default and such taking possession, lease or sale by Vendor, give to Vendee any legal or equitable interest or title in or to the racks or any of them or any cause or right of action at law or in equity with respect to the racks against Vendor, all subject to and in compliance with any requirements of law. No such taking possession or lease or sale of the racks by Vendor shall be a bar to the recovery by Vendor from Vendee of any unpaid balance of the purchase price of the racks, and Vendee shall be and remain liable for the same, until such sums shall have been realized as with the proceeds of the lease or sale of any or all of the racks shall be sufficient for the discharge and payment in full of all sums payable by Vendee under any of the provisions of this Agreement.

If, in case of the happening of any such event of default Vendor shall exercise any of the powers conferred upon it by this Agreement, all payments made by Vendee to Vendor under this Agreement after such event of default, and the proceeds of any judgment collected by Vendor from Vendee hereunder, and the proceeds of every lease or sale by Vendor hereunder of any of the racks together with any other sums which may then be held by Vendor under any of the provisions of this Agreement, shall be applied by Vendor in the order of priority

following, viz.: (a) to the payment of all proper expenses, including any attorney's fees, incurred or advances made by Vendor in accordance with the provisions of this Agreement, including the expense of any retaking of the whole or any part of the racks and all expenses of the custody and of any lease or sale thereof, (b) to the payment of all regular interest due and owing on the principal, (c) to the payment of the principal, and (d) to the payment of all other sums of money due and payable to Vendor under the provisions of this Agreement, including any taxes, assessments or governmental charges paid by or imposed upon Vendor in respect of the racks. After all such payments shall have been made in full the title to any of the racks remaining unsold shall be conveyed by Vendor to Vendee, or otherwise as it may direct, free from any further liabilities or obligations to Vendor hereunder. If, after applying as aforesaid all such sums of money realized by Vendor there shall remain any amount due to Vendor under the provisions of this Agreement, Vendee agrees to pay the amount of such deficit to Vendor. If, after applying as aforesaid all such sums of money realized by Vendor, there shall remain a surplus in the possession of Vendor such surplus shall be paid to Vendee, or otherwise as it may direct in writing.

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

The foregoing provisions, however, are subject to the condition that if, at any time after the unpaid balance of the deferred purchase price shall have been declared due and payable as provided in this Agreement, all arrears of installment payments with interest as hereinabove provided and the expenses of Vendor and all other sums which shall have become due and payable by Vendee under this Agreement (other than the unpaid installments which shall not at the time have matured according to their terms) shall have been paid by or on behalf of Vendee before any lease or sale by Vendor of any of the racks, and every other default in the observance or performance of any covenant or condition of this Agreement shall have been made good or cured to the satisfaction of Vendor or provisions deemed by Vendor to be adequate shall have been made therefor, then and in every such case Vendor shall waive the default by reason of which the unpaid balance of the purchase price of the cars shall have been declared and become due

and payable and shall waive the consequences of such default, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon.

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

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

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

13. **EXTENSION NOT A WAIVER.** Any extension of time granted by the Vendor to the Vendee for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall apply to the particular instance only, and shall not be deemed a waiver of the title of the Vendor reserved hereunder nor any of their rights and remedies hereunder or otherwise existing; and no delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right hereafter to exercise the same.

14. **RECORDATION AND EXPENSES.** Vendee, at its own expense, shall cause this Agreement and any supplement hereto and the first assignment thereof, to be filed and recorded with the Interstate Commerce

Commission in accordance with Section 20c of the Interstate Commerce Act, and the 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 the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to any equipment purchased pursuant to the Agreement and its rights under this Agreement or for the purpose of carrying out the intentions of this Agreement including, without limitation if determined as necessary, financing statements under the Uniform Commercial Code heretofore adopted by the Commonwealth of Kentucky and any other jurisdictions in which it may be necessary to file in order to protect the priority security interest of the Vendor; and the Vendee shall promptly furnish to the Vendor certificates or other evidence of such filing and recording and an opinion or opinions of counsel for the Vendee with respect thereto satisfactory to the Vendor.

15. **PAYMENT OF EXPENSES.** Vendee shall pay (a) all costs, charges and expenses (including all fees of the proposed assignee of this Agreement, stamps and other taxes, if any) incident to the preparation, execution, acknowledgement, delivery and recordation of this Agreement, and of the first assignment hereof by the Vendor, and all such costs, charges and expenses in connection with any instrument supplemental hereto or amendatory hereof, and (b) an amount equal to the reasonable fees and disbursements of Messrs. Shearman & Sterling, counsel to the proposed assignee of this Agreement.

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

17. **PROHIBITION AGAINST LIENS.** The Vendee will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Vendee, and/or the Vendor which, if unpaid, might become a lien or a charge upon the racks, or any thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be con-

tested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor adversely affect the property or rights of the Vendor hereunder.

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

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

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

20. NOTICE. Any notice hereunder to any of the parties designated below shall be deemed to be properly served or delivered if mailed to it at the following specified addresses:

(a) to Portec Inc. at 44000 Grand River, P. O. Box 4816, Detroit, Michigan 48219;

(b) to Vendee at 908 West Broadway, Louisville, Kentucky 40201;

(c) to TTX at 300 South Wacker Drive, Chicago, Illinois 60606;  
and

(d) to any assignee of the Vendor, at such address as may have been furnished in writing to the Vendor and the Vendee by such assignee.

21. EXECUTION OF COUNTERPARTS. 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. Although this Agreement is dated for convenience as of the date first above written, 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.

22. PARTICIPATION OF TTX. TTX is made a party to this Conditional Sale Agreement solely for the purposes heretofore specified, including: 1) to acknowledge that it will supply the essential 235 flat cars, 2) to waive any interest in or to the auto racks after they are attached to the said flat cars, 3) to warrant that the racks will be free of all claims, liens, encumbrances or security of any nature which TTX might now or in the future assert and, 4) to acknowledge that the identifying numbers affixed to the involved flat cars will not be changed without notification to and prior approval of the interested parties.

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

PORTEC INC.

(Corporate Seal)

ATTEST: *W. Morrell*  
Assistant Secretary

By *James E. Horton*  
Vice President

LOUISVILLE AND NASHVILLE  
RAILROAD COMPANY

(Corporate Seal)

ATTEST: *W. A. Fester*  
Assistant Secretary

By *R. E. Bishop*  
Vice President

TRAILER TRAIN COMPANY

(Corporate Seal)

ATTEST: *R. E. J. J. J.*  
Assistant Secretary

By *W. L. Sharver*  
Vice President

STATE OF <sup>ILLINOIS</sup> MICHIGAN }  
                  Cook } ss:  
COUNTY OF WAYNE }

The undersigned, a Notary Public for the State and County aforesaid, certifies that, on the date hereinafter stated, personally appeared before me in said State and County, JAMES C. HORTON, to me personally known, who thereupon produced before me the foregoing instrument, and who, being by me duly sworn, says that he is a Vice President of Portec Inc., a corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed by him on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution and delivery of said instrument was the free act and deed of said corporation.

Witness my hand and notarial seal, this 25<sup>th</sup> day of May, 1973.

Notary Public

*Margaret M. Vogl*

(NOTARIAL SEAL)



COMMONWEALTH OF KENTUCKY

COUNTY OF JEFFERSON

SS:

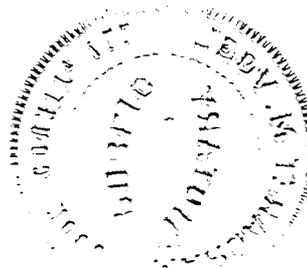
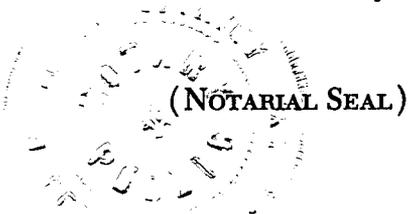
The undersigned, a Notary Public for the State and County afore-  
said, certifies that, on the date hereinafter stated, personally appeared  
before me in said State and County, *R. E. Bisha*

to me personally known, who thereupon produced before me the fore-  
going instrument, and who, being by me duly sworn, says that he is a  
Vice President of Louisville and Nashville Railroad Company, a cor-  
poration, that the seal affixed to said instrument is the corporate seal  
of said corporation, that said instrument was signed and sealed by him  
on behalf of said corporation by authority of its Board of Directors, and  
he acknowledges that the execution and delivery of said instrument  
was the free act and deed of said corporation.

Witness my hand and notarial seal, this *24th* day of May, 1973.

*Marvin J. Parvey*  
Notary Public

NOTARY PUBLIC, JEFFERSON COUNTY, KY,  
My Commission Expires March 12, 1974



STATE OF ILLINOIS }  
COUNTY OF COOK } ss:

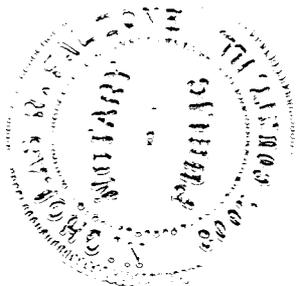
The undersigned, a Notary Public for the State and County afore-  
said, certifies that, on the date hereinafter stated, personally appeared  
before me in said State and County, **W. R. SHANNON**,  
to me personally known, who thereupon produced before me the fore-  
going instrument, and who, being by me duly sworn, says that he is a  
Vice President of Trailer Train Company, a corporation, that the seal  
affixed to said instrument is the corporate seal of said corporation, that  
said instrument was signed and sealed by him on behalf of said cor-  
poration by authority of its Board of Directors, and he acknowledged  
that the execution and delivery of said instrument was the free act and  
deed of said corporation.

Witness my hand and notarial seal, this **25<sup>th</sup>** day of May, 1973.

Notary Public

*W. R. Shannon*

(NOTARIAL SEAL)



TTRX	964449	964490
	964452	964491
	964453	964492
	964456	964493
	964458	964494
	964462	964495
	964463	964496
	964464	964497
	964465	964498
	964466	964499
	964467	964500
	964468	964501
	964469	964502
	964470	964503
	964471	964504
	964472	964535
	964473	964536
	964474	964537
	964475	964538
	964476	964539
	964478	964540
	964479	964541
	964480	964542
	964481	964543
	964482	964544
	964483	964545
	964484	964546
	964485	964550
	964486	964551
	964487	964552
	964488	964553
	964489	

**SCHEDULE B**

One hundred seventy-two (172) bi-level screened auto racks  
bearing TTX road numbers

## SCHEDULE B

One-hundred seventy (170) bi-level screened  
auto racks bearing TTX road numbers -

TTX 941116	941192	964477	964610	964638	964681
941163	941193	964577	964611	964639	964682
941164	941194	964578	964612	964640	964683
941165	941195	964583	964613	964641	964684
941166	941196	964584	964614	964642	
941167	941201	964585	964615	964643	964685
941168	941202	964586	964616	964644	964686
941171	941203	964587	964617	964645	964687
941172	941204	964590	964618	964661	964688
941173	941205	964591	964619	964662	964689
941174	941209	964592	964620	964663	964690
941175	941210	964593	964621	964664	964691
941176	941211	964594	964622	964665	964693
941177	941219	964595	964623	964666	964694
941178	941236	964596	964624	964667	964695
941179	941254	964597	964625	964668	964696
941180	941255	964598	964626	964669	964697
941181	941260	964599	964627	964670	964698
941182	941263	964600	964628	964671	964699
941183	941284	964601	964629	964672	964700
941184	941285	964602	964630	964673	964701
941185	941286	964603	964631	964674	<del>964702</del>
941186	941287	964604	964632	964675	964703
941187	941289	964605	964633	964676	964704
941188	941290	964606	964634	964677	964705
941189	941291	964607	964635	964678	964706
941190	964448	964608	964636	964679	964709
941191	964461	964609	964637	964680	964710
					964711
					964733
					964739

*Corrected  
6/19/73 per  
letter from*

*964702*

*Law.*

Two (2) bi-level unscreened auto racks  
bearing TTX road numbers -

TTX 964707  
964708

## AGREEMENT AND ASSIGNMENT

**AGREEMENT AND ASSIGNMENT**, dated as of March 1, 1973, by and among PORTEC INC., a corporation of the State of Delaware (hereinafter sometimes referred to as "Seller"), FIRST NATIONAL CITY BANK, a national banking association organized and existing under the laws of the United States of America, having a principal office at 399 Park Avenue, New York, New York 10022 (said Bank being hereinafter called the "Bank"), and TRAILER TRAIN COMPANY, a corporation of the State of Delaware (hereinafter called "TTX").

## WITNESSETH:

WHEREAS, Seller, TTX and Louisville and Nashville Railroad Company, a corporation of the Commonwealth of Kentucky (hereinafter called the "Buyer"), entered into a Conditional Sale Agreement, dated as of March 1, 1973 (hereinafter called the "Conditional Sale Agreement"), for the purchase by Buyer from Seller of two hundred thirty-five (235) auto racks and the installation of said racks on TTX flat cars; said racks being hereinafter called the "racks", all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

NOW, THEREFORE, in consideration of the Sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Bank to the Seller, the receipt of which is hereby acknowledged, as well as of the mutual promises, covenants and agreements hereinafter set forth:

(1) Seller hereby sells, assigns, transfers and sets over to the Bank, its successors and assigns, all the right, title and interest of such Seller under the Conditional Sale Agreement (except the right to construct, install and deliver, and the right to receive all payments in respect of each rack in excess of the deferred purchase price specified in Section 2(A) of the Conditional Sale Agreement, reimbursement for taxes paid or incurred as provided in Section 4 thereof, and the right to receive all payments specified in the fifth paragraph of Section 9 of the Conditional Sale Agreement) together with all the powers, privileges, immunities and remedies of each Seller thereunder, and all the right, title and interest of such Seller in and to each of the racks when and as the same are severally constructed, installed, delivered and accepted by

*miss  
Paynter  
dtd.  
6/18/73*

the Buyer, and, upon payment therefor by the Bank to each Seller of the amounts required to be paid under Section (7) hereof, in and to any and all amounts which may be or become due and owing by the Buyer to such Seller under the Conditional Sale Agreement on account of the deferred purchase price of each rack and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement, except any payments or rights hereinbefore excluded, without any recourse, however, to the Seller, for or on account of any failure of payment or compliance with any of the terms or provisions of said Conditional Sale Agreement on the part of the Buyer; *provided, however*, that this Agreement and Assignment shall not subject the Bank to, or relieve the Seller from, any duty, obligation or liability under the Conditional Sale Agreement, except the duty to execute necessary and proper instruments of transfer as and when the Buyer shall be entitled thereto under said Conditional Sale Agreement, nor shall it relieve the Buyer from its obligations to the Seller under Section 7 of the Conditional Sale Agreement. In furtherance of the foregoing assignment and transfer, each Seller hereby authorizes and empowers the Bank, in such manner and at such times as the Bank may deem advisable, in the name of such Seller or in the Bank's own name or in the name of the Bank's nominee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which the Bank is or may become entitled under this Agreement and Assignment and compliance by the Buyer with the terms and agreements on the part of the Buyer to be performed under the Conditional Sale Agreement, but without expense and liability to the Seller, or either of them, and for the sole benefit of the Bank. This sale, assignment, transfer and set over to the Bank is without recourse by the Bank against Seller for any amounts which may be or become due and owing by the Buyer to the Seller under the Conditional Sale Agreement and which may be or will become due and owing the Bank as a result of this Agreement and Assignment.

(2) Seller warrants that as set forth in and subject to the provisions of the Conditional Sale Agreement it has legal title to the racks to be constructed and installed by it, free and clear of all liens and encumbrances and subject to no rights or claims of any persons whatsoever except those of the Buyer under the Conditional Sale Agreement, and good right to sell the same, and that notwithstanding this Agreement and Assignment, it will perform and fully comply with each

and all the covenants and conditions of the Conditional Sale Agreement to be performed and complied with by such Seller; and that the Bank shall have title to and a claim upon each of said racks prior and superior to the rights and claims of all other persons whatsoever as security for the payment by the Buyer of the deferred purchase price of all racks; and that the obligation of the Buyer to pay the aggregate amount of the deferred purchase price of all racks accepted by it, with interest upon the balance thereof from time to time remaining unpaid, as provided in said Conditional Sale Agreement, is legal, binding, unconditional and subject to no defense, set-off or counterclaim whatever.

(3) Seller covenants and agrees that, at the time of delivery of each of the racks to the Buyer, each side of each such rack shall be plainly, distinctly and conspicuously "plated" or marked by stencilling in letters not less than one-half inch in height with the following words:  
"First National City Bank – Owner"

(4) Seller agrees that this Agreement and Assignment will not transfer or impose upon the Bank, or in any way affect or modify (a) Seller's obligation to construct and install its racks in accordance with the Conditional Sale Agreement as therein set forth, or (b) Seller's obligation to indemnify the Buyer against and save and keep the Buyer harmless from any loss or expense resulting from patent claims, all as set forth in Section 8 of the Conditional Sale Agreement, the said obligations to be and remain enforceable against and only against the Seller, as provided in the Conditional Sale Agreement.

(5) Seller agrees to indemnify and save harmless the Bank against any and all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of any alleged infringement of patents covering the racks or any part thereof.

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

(7) The Bank covenants and agrees that upon delivery to and acceptance by the Buyer pursuant to the Conditional Sale Agreement of a Group (as defined in the Conditional Sale Agreement) of the racks, it will make payment to the Seller of the deferred purchase price of the racks in such Group as provided in Section 2 of the Conditional Sale Agreement in New York Clearing House funds after receipt by the Bank (herein called a "Settlement Date") of the following documents in form and substance satisfactory to it and its counsel, provided it shall have received the same at least seven business days before July 15, 1973:

(a) a bill of sale from the Seller to the Bank confirming in the Bank title to the racks in such Group, subject, however, to the rights of the Buyer under the Conditional Sale Agreement, and warranting to the Bank that at the time of delivery to the Buyer under the Conditional Sale Agreement the Seller had legal title to such racks and good and lawful right to sell such racks and title to such racks was free of all claims, liens and encumbrances of any nature except only the rights of the Buyer under the Conditional Sale Agreement;

(b) a certificate of inspection and acceptance signed by an authorized representative of the Buyer stating that the racks in such Group have been delivered to and accepted by him on behalf of the Buyer as conforming in all respects to the requirements and the provisions of the Conditional Sale Agreement and that each side of each such rack is plainly, distinctly and conspicuously marked by "plating" or stencilling with the following words in letters not less than one-half inch in height:  
"First National City Bank - Owner"

(c) a duplicate of the Seller's invoice covering the racks in such Group, stating the full purchase price and the deferred purchase price of each of said racks and acknowledging receipt, if any, of payment of the excess of the full purchase price over the deferred purchase price of such racks;

(d) a certificate executed by the Buyer stating that the amounts of the deferred purchase price and the full purchase price of each of said racks are the amounts shown on the invoice hereinabove referred to in subparagraph (c) hereof and that the excess of the said full purchase price over the deferred purchase price, if any, has been paid;

(e) an opinion of counsel for the Buyer, dated as of such Settlement Date for such Group of racks, in form acceptable to the Bank and its counsel as specified in Section 9 of the Conditional Sale Agreement;

(f) an opinion for the Seller, dated as of the Settlement Date for such Group of racks, in form acceptable to the Bank and its counsel, to the effect that (i) the Seller is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; (ii) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by such Seller and are valid instruments binding upon such Seller and enforceable against such Seller in accordance with their respective terms; (iii) the Bank is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Agreement and Assignment; and (iv) title to the racks in the Group being settled for on such Settlement Date is validly vested in the Bank and such racks, at the time of delivery and acceptance thereof to the Buyer under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Buyer under the Conditional Sale Agreement;

(g) an opinion of counsel for TTX, dated as of the Settlement Date for such Group of racks, in form acceptable to the Bank and its counsel, to the effect that (i) TTX is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted; (ii) the Conditional Sale Agreement and this Agreement and Assignment have been duly authorized, executed and delivered by TTX and are valid instruments binding upon TTX and enforceable against it in accordance with their respective terms; (iii) the installation of the racks in the Group being settled for on such Settlement Date, on the flat cars furnished by TTX do not constitute an accession to such flat cars; (iv) the racks in the Group being settled for on such Settlement Date, are free of all claims, liens, encumbrances or security interests of any nature which might now or hereafter be asserted by TTX or anyone claiming an interest therein by or through TTX;

(h) a favorable opinion of Messrs. Shearman & Sterling, counsel

for the Bank, to the effect that while they have not independently considered the matters covered by the opinions furnished pursuant to subsections (e), (f) and (g) above to the extent the conclusions stated therein, such opinions, and other documents furnished pursuant to this Section (7), are substantially responsive to the requirements of the Conditional Sale Agreement and this Agreement and Assignment.

In giving the opinions specified in subsection (e), (f), (g) and (h) above, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms, by a general reference as to limitations as to the enforceability imposed by laws with respect to or affecting remedies and by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally.

The Bank shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default under the Conditional Sale Agreement, shall have occurred and be continuing. In the event the Bank does not make payment for any Group of Equipment as herein provided, the Bank shall reassign to the Seller, without recourse to the Bank, all right, title and interest of, the Bank in and to such racks.

It is understood and agreed that the Bank shall not be required to make any payment in respect of any rack excluded from the Conditional Sale Agreement pursuant to subsection (C) of Section 2 thereof. The Bank shall at the request of the Seller or the Buyer execute or join in the execution of such supplemental agreement as may be deemed necessary or appropriate to exclude any such rack from the Conditional Sale Agreement and from this Agreement and Assignment.

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

(8) It is mutually agreed that the Bank and any assignee of the Bank may assign, and/or sell interests in, its rights hereunder and under the Conditional Sale Agreement, as a whole or in part or in respect of all or any one or more racks covered thereby, including the right to receive any payments due or to become due to it from the

Buyer under the Conditional Sale Agreement in respect of such racks. In the event of any such assignment or sale, any such subsequent or successive assignee or assignees or purchasers shall, to the extent of such assignment or sale, enjoy all the rights and privileges and be subject to all the obligations of the Bank hereunder.

(9) Seller hereby:

(a) represents and warrants to the Bank, its successors and assigns that the Conditional Sale Agreement was duly authorized, lawfully executed and delivered by it for a valid consideration, and that assuming valid authorization, execution and delivery by the other parties thereto, the Conditional Sale Agreement is a valid, existing Agreement binding upon such parties in accordance with its terms, and that there has been no amendment thereto; and

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

(10) This Agreement and Assignment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Agreement and Assignment is dated for convenience as of the date first above written, 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.

(11) No delay in exercising, or failure to exercise or partial exercise of any of the rights of the Bank under this Agreement and Assignment shall operate as a waiver thereof. In no event shall any notice to or demand on the Seller be deemed a waiver of any obligation to the Seller to comply without notice or demand with all the terms, conditions and agreements herein contained, or a waiver of any right of the Bank to take further action as herein provided without notice or de-

mand, nor in any event shall any waiver or consent on the part of the Bank be effective unless in writing, and then only with respect to the specific instance for which the same is given.

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

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

(14) TTX is made a party to this Agreement and Assignment for the purpose of evidencing its consent to render, when requested, the opinion required by Section 7(g) of this Agreement and Assignment.

IN WITNESS WHEREOF, each party hereto has caused this instrument to be executed in its respective names by its respective officers or officials thereunto duly authorized, and have caused its respective corporate seals to be affixed, duly attested, as of the day and year first above written.

PORTEC, INC.

(Corporate Seal)  By James E. Halon  
Vice President

ATTEST: W. J. Morris  
Assistant Secretary

FIRST NATIONAL CITY BANK

(Corporate Seal)  By Michael E. Dugalski  
Vice President

ATTEST: Bob Jones  
~~Assistant Cashier~~  
ACCOUNT OFFICER

TRAILER TRAIN COMPANY

(Corporate Seal) By W. J. Starnon  
Vice President

ATTEST: R. E. Jemmura  
Assistant Secretary



LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40201 • TELEPHONE 587-1121

June 18, 1973

LAW DEPARTMENT

WANDALEEN POYNTER  
ATTORNEY

Mr. Robert L. Oswald, Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

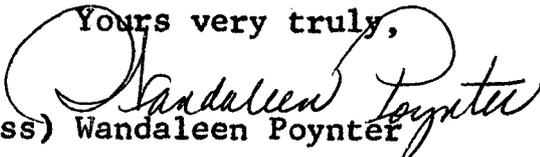
Dear Mr. Oswald:

On May 31, 1973, Louisville and Nashville Railroad Company filed with the Commission, pursuant to Section 20c of the Interstate Commerce Act, fully executed copies of a Conditional Sale Agreement and an Agreement and Assignment, both dated as of March 1, 1973. The file stamp on L&N's copies of the documents, which are common-bound, indicates a recordation time of 9:50 AM and the assignation of recordation number 7040.

An error in Schedule B to the Conditional Sale Agreement was discovered subsequent to the date the documents were filed and recorded. The tenth TTX road number from the bottom of column six is incorrectly listed as 964602. The listing in column 6 should be corrected from 964602 to 964702. The 964602 listing in column three is correct.

Would you please direct that this correction is made and acknowledge such on the enclosed copy of this letter.

Yours very truly,

  
(Miss) Wandaleen Poynter

WP/k

This is to acknowledge that the road number correction requested in this letter was made this 19<sup>th</sup> day of June, 1973.

By

