
CONDITIONAL SALE AGREEMENT
Dated as of July 6, 1973.

Between

INTERNATIONAL CAR CO., a Division of
INTERNATIONAL RAMCO, INC.

and

MISSOURI-KANSAS-TEXAS RAILROAD
COMPANY

For 7 Wide Vision Cupola Cabooses

7108
RECORDATION NO. _____ Filed & Recorded
JUL 18 1973 - 12 15 PM
INTERSTATE COMMERCE COMMISSION

AGREEMENT AND ASSIGNMENT
Dated as of July 6, 1973

Among

INTERNATIONAL CAR CO., a Division of
INTERNATIONAL RAMCO, INC.

FIRST CITY NATIONAL BANK OF HOUSTON

and

MISSOURI-KANSAS-TEXAS RAILROAD
COMPANY

THIS AGREEMENT, dated as of July 6, 1973, by and between INTERNATIONAL CAR CO., a Division of International RAMCO, Inc., a corporation organized under the laws of the State of Illinois, with offices in Kenton, Ohio (hereinafter called the "Manufacturer"), and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware, with an office in the City of Dallas, Texas (hereinafter called the "Railroad"),

W I T N E S S E T H:

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

1. Construction and Sale. The Manufacturer will construct, sell and deliver to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth railroad equipment (any one of which is hereinafter referred to as "Caboose" and more than one or all of which are hereinafter referred to as "Cabooses") as follows:

Seven (7) Wide Vision Cupola Cabooses bearing Railroad's road numbers 136 - 142, both inclusive, to be constructed pursuant to Manufacturer's Specification No. 414 dated December 13, 1971, as revised under dates of July 18, 1972, January 9, 1973, and May 18, 1973; Manufacturer's Drawings 16E-14 and 16E-15 covering general arrangement and interior elevations of the said Cabooses, and Manufacturer's Revised Proposal dated May 11, 1973, all as set forth in Railroad's Purchase Order No. D-65868, dated May 17, 1973.

2. Delivery. The Manufacturer will deliver the Cabooses to the Railroad free on tracks at Kenton, Ohio, not later than July 16, 1973. Any Cabooses not delivered and accepted on or before such date shall be excluded herefrom.

On delivery of the Cabooses by the Manufacturer the Railroad will assume the responsibility and risk of loss with respect to the Cabooses so delivered.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes or other labor conditions, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays or defaults of subcontractors, failure to receive necessary materials or supplies or absence of usual means of transportation.

The Railroad shall accept the Cabooses upon delivery to it at Eve, Missouri. Upon delivery at Eve, Missouri, Railroad shall accept said Cabooses and shall execute a Certificate of Acceptance. Such Certificate of Acceptance shall constitute conclusive evidence that the Cabooses conform to specifications and are acceptable to the Railroad in all details. The Certificate of Acceptance shall be delivered to the Manufacturer at the time of the delivery of the Cabooses to the

Railroad. Any number of said Cabooses may be included in any such Certificate of Acceptance.

3. Purchase Price and Payment. The purchase price of all seven Cabooses shall be \$199,923.01.

Conditional only upon the receipt and acceptance of the Cabooses which shall be conclusively presumed from the execution of the Certificate of Acceptance, the Railroad hereby promises to pay to the Manufacturer at its office in Kenton, Ohio, or at such bank or trust company in the United States of America as the Manufacturer may designate, the aforesaid price of the Cabooses as follows:

(a) That portion of the actual full purchase price of all said Cabooses in excess of the sum of \$180,000.00, if any, shall be paid by Railroad to Manufacturer upon receipt of invoice therefor.

(b) \$180,000.00 of the actual full purchase price of said Cabooses (being the deferred purchase price thereof) shall be paid by Railroad in thirty (30) consecutive monthly installments commencing on August 10, 1973, of Six Thousand and no/100 Dollars (\$6,000.00) each with the final installment being due and payable on January 10, 1976, together with interest thereon. The principal balance remaining unpaid from time to time

shall bear interest at a rate of one-half (1/2) of one (1) per cent above the prime interest rate established by First City National Bank of Houston, Houston, Texas, for large businesses that is in effect the last business day of the month preceding each monthly payment.

The Railroad will pay to the extent legally enforceable interest at the rate of eleven per cent (11%) per annum upon all such amounts, principal and interest, remaining unpaid after the same become due and payable pursuant to the terms hereof.

All payments provided for in this agreement will be made by the Railroad 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.

The Railroad shall have the right to prepay without penalty all or any part of the unpaid balance due on all of the Cabooses delivered hereunder at any time with interest at the rate specified in (b) above to the date of such payment upon thirty-days' written notice to the Manufacturer or its assignee. All such prepayments shall be applied first to accrued interest then due and the remainder to the unpaid installments of principal in the inverse order of their maturity.

4. Taxes. All payments to be made by the Railroad hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than Federal and State income and excess profits taxes) or licenses hereafter levied or imposed directly upon, or measured by, this agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay in addition to the purchase price of the Cabooses. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Cabooses or for the use thereof or upon the earnings arising therefrom or the operation thereof or upon the Manufacturer by reason of its ownership thereof by any jurisdiction in which the Cabooses are operated by the Railroad and will keep at all times all and every part of the Cabooses free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer. If any such expenses or taxes shall have been paid by the Manufacturer, the Railroad shall reimburse the Manufacturer on presentation of invoice, and any sums of money so paid by Manufacturer shall be secured by and under this contract.

5. Title to the Equipment. The Manufacturer shall and hereby does retain the full legal title to and property in the Cabooses until the Railroad 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 Railroad notwithstanding the delivery of the Caboose to and the possession and use thereof by the Railroad as herein provided. Any and all replacements of the Caboose and of parts thereof or of any replacements thereof and additions thereto shall constitute accessions to the Caboose and be subject to all the terms and conditions of this agreement and included in the term "Caboose" as used in this agreement.

The Railroad, so long as it shall not be in default under this agreement, shall be entitled to the possession and use of the Caboose as herein provided, subject to the terms and conditions herein contained.

The Railroad will cause each Caboose to be kept numbered with its identifying number and will keep and maintain, plainly, distinctly, permanently and conspicuously stenciled on each side of the Caboose the name of the Manufacturer or of the Manufacturer's assignee, as the case may be, in letters of not less than one inch in height followed by the word "Owner" or other appropriate words designated by the Manufacturer. The Railroad will not place any of the Caboose in operation or exercise any control or dominion over any part thereof until the Caboose have been so marked on both sides of each Caboose. The Railroad will not change the numbers of the Caboose without first notifying the Manufacturer in writing.

Except as above provided the Railroad will not allow the name of any person, association or corporation to be placed on the Caboose or

any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Cabooses to be lettered with appropriate words or marks for convenience of identification of the Railroad's interest therein.

When and only when the Manufacturer has been paid the full purchase price of the Cabooses together with interest and any and all other payments as herein provided, and all of the Railroad's covenants and conditions herein contained have been performed by the Railroad, absolute right to the possession of, title to and property in the Cabooses shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer except that the Manufacturer will, if requested by the Railroad so to do, execute and deliver to the Railroad a bill of sale of the Cabooses transferring the title to and property in them to the Railroad free and clear of all liens and encumbrances created or retained hereby and will execute for record or for filing in public office such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Cabooses.

No invoice issued prior to the complete performance of this contract shall operate to pass title to said Cabooses.

6. Replacement. In the event of loss or destruction of or irreparable damage to any of the Cabooses from any cause whatsoever until the total purchase price herein provided shall have been fully paid by

the Railroad, the Railroad shall promptly and fully inform the Manufacturer in regard to such loss or destruction. The Railroad shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance applicable to such Caboose or Caboose or shall replace each such Caboose at its own cost with a Caboose of similar type and of substantially as good material and construction as that lost or destroyed and having a cost or fair value (whichever is less) at least equal to the Fair Value of the Caboose replaced as the time of replacement. The Railroad will cause any such Caboose to be marked as provided in Article 5 hereof and to be numbered with the same number as the Caboose so replaced. Any and all such replacements of Caboose or any of them and all and any parts shall constitute accessions to the Caboose and shall be subject to all of the terms and conditions of this agreement as though part of the original Caboose delivered hereunder and included in the word "Caboose" as used in this agreement. Title to all such replacement Caboose shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer (or, if this agreement shall have been assigned, in the name of the assignee or assignees, as the case may be), subject to the provisions hereof.

7. Maintenance and Repair. The Railroad will at all times maintain the Caboose in good order and repair at its own expense.

8. Manufacturer's Warranty of Material and Workmanship. Manufacturer warrants to the Railroad that said Caboose are of the kind and quality

described in the specification referred to herein and are suitable for the ordinary purposes for which such equipment is used.

Manufacturer further warrants said Cabooses to be free from defects in material and workmanship or design which may develop under normal use and service. The Manufacturer's obligation under this warranty is limited to making good at its plant the part or parts of any unit of the equipment manufactured by Manufacturer which shall within one year after delivery of such unit to the Railroad be returned with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

Manufacturer warrants specialties not of its own specification or design to the same extent that the Suppliers of such specialties warrant such items to Manufacturer.

There are no warranties, expressed or implied, made by Manufacturer except the warranties set out above.

9. Compliance With Laws, Rules and Regulations. Until the total purchase price herein provided for and all other sums of money payable by the Railroad hereunder shall have been fully paid by the Railroad, the Railroad will comply in all respects with all laws of the United States and of the States and Territories in which its operations involving the Cabooses may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction

over the Cabooses. In the event that said laws or rules require the alteration of the Cabooses, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules until the total purchase price herein provided shall have been fully paid by the Railroad; provided, however, that the Railroad may, in good faith, contest in any reasonable manner the application of any such law or rule which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Cabooses.

10. Reports and Inspections. The Railroad will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price herein provided shall have been fully paid by the Railroad, an accurate inventory of the Cabooses in actual service, the numbers and description of such Cabooses as may have been destroyed and replaced by others, and the then condition and state of repair of the Cabooses and such other information regarding the Cabooses as may reasonably be requested. In addition thereto the Railroad will furnish to the Manufacturer, if requested, once in each year, until the total purchase price herein provided shall have been fully paid by the Railroad, a report of inspection by an authorized representative of the Railroad, or if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that said Cabooses have been maintained, and are in good order and repair.

The Railroad will promptly and fully inform the Manufacturer of any loss or destruction of any of the Cabooses and of any substantial repairs made or being made upon them or any of them. If requested by the Manufacturer the Railroad will furnish to the Manufacturer a report of an authorized representative of the Railroad, or if the Manufacturer so requests, of a competent disinterested party, satisfactory to the Manufacturer, covering the nature and extent of any damage to the Cabooses and the satisfactory repair thereof.

The Manufacturer may, but shall be under no obligation to, inspect the Cabooses at any reasonable time or times until the total purchase price herein provided has been fully paid by the Railroad. The Railroad, insofar as it may legally do so, will supply free transportation over its lines to designated agents of the Manufacturer for the purpose of enabling such agents to reach the point or points where the Cabooses are in operation, for the purpose of making such inspection.

11. Possession and Use. The Railroad, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Cabooses and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with another and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with the Railroad or over which it has trackage rights, and the Cabooses may be used also upon connecting and other railroads and car ferries in the

customary manner, from and after delivery of the Cabooses by the Manufacturer to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

12. Prohibition Against Liens. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Cabooses, or any of them superior to the title of the Manufacturer therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Manufacturer in and to the Cabooses. The Railroad shall notify the Manufacturer of any contest it makes of any such charges, and, in the event the Manufacturer deems that its rights in the Cabooses may be jeopardized by such contest, the Railroad will, on the Manufacturer's demand, pay such contested charges with such reservation as may be appropriate. Any sum of money paid by the Manufacturer in discharge of liens or encumbrances on said Cabooses shall be an obligation of the Railroad and shall be secured by and under this contract.

13. Railroad's Indemnities and Guarantees. The Railroad will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the

cause thereof, arising on account of the Caboose or the use or operation thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Caboose, as provided in Article 5 hereof, or the termination of this agreement in any manner whatsoever.

The Railroad will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of any or all of the Caboose; provided, however, that the Manufacturer and any successor or successors to its manufacturing property and business shall not, as to the Caboose, be relieved from its warranty covering workmanship and material hereinbefore in Article 8 set forth.

14. Patent Indemnities. Except in cases of designs, articles or materials specified by the Railroad to the extent same are not covered by patent rights existing in favor of the Manufacturer, which the Manufacturer has the power to extend to third persons, the Manufacturer agrees to indemnify, protect and hold harmless the Railroad, and its 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 the Railroad, or its assigns, because of the use in or about the construction or operation of any of the Caboose of any design, article or material infringing or claimed to infringe on any patent or other right; and the Railroad likewise will indemnify, protect and hold harmless the Manufacturer and its 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 Manufacturer or its assigns because of the use in or about the construction or operation of any of the Cabooses of any design, article or material specified by the Railroad to the extent not covered by patent rights existing in favor of the Manufacturer, which the Manufacturer has the power to extend to third persons, which infringes, or is claimed to infringe, on any patent or other right. The Manufacturer agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign set over and deliver to the Railroad, or its assigns, every claim, right and cause of action which the Manufacturer has or hereafter shall have against the seller or sellers of any designs, articles or materials specified by the Railroad and purchased or otherwise acquired by the Manufacturer for use in or about the construction or operation of any of the Cabooses, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right, and the Manufacturer further agrees to execute and deliver to the Railroad, or its assigns, all and every such further assurance as may be reasonably requested by the Railroad, or its assigns, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action. The Manufacturer will give notice to the Railroad of any claim known to the Manufacturer

from which liability may be charged against the Railroad hereunder, and the Railroad will give notice to the Manufacturer and its assigns of any claim known to the Railroad from which liability may be charged against the Manufacturer hereunder.. The party responsible shall be given the opportunity to settle or defend against any such claim as it shall see fit.

15. Assignments. Manufacturer's rights hereunder, including the right to receive the payments above specified, may be assigned by the Manufacturer; provided, however, that no such assignment shall be effective to relieve Manufacturer from its obligation to construct and deliver the Cabooses, which are the subject matter hereof, within the time and under the conditions herein specified.

16. Successors to and Assignments by the Railroad. The Railroad 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 of the obligations of the Railroad then existing or to accrue under this agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the railways and properties of the Railroad, and that upon any 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 to such acquisition, be bound by all such obligations.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of said Caboose to any other firm, person or corporation without first obtaining written consent of the Manufacturer to such sale, assignment or transfer.

17. Defaults. In the event that any one or more of the following events of default shall occur, to-wit:

(a) The Railroad fails to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 3 hereof; or

(b) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this agreement on its part to be kept and performed; or

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, is filed by or against the Railroad and the trustee or trustees fail to adopt this agreement within 30 days of the date of his or their appointment unless such petition is dismissed prior to the expiration of such 30 days; or

(d) Any proceedings are commenced by or against the Railroad for any relief under any bankruptcy or insolvency laws, or laws

relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions other than a proceeding under Section 20b of the Interstate Commerce Act and the trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with such proceedings fail to adopt and assume and agree to perform the terms and obligations of this agreement within 30 days of the date of his or their appointment, unless such proceedings are dismissed prior to the expiration of such 30 days; or

(e) The Railroad transfers or attempts to transfer its interest in or under this agreement without the consent of the Manufacturer; then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Railroad and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire purchase price of the Caboose, together with the interest thereon then accrued and unpaid, immediately due and payable without further demand, and thereafter to the extent legally enforceable the entire sum shall bear interest at the rate of eleven per cent (11%) per annum, and the Manufacturer shall be entitled to judgment for the whole amount so due from the Railroad with interest at said rate, together with costs and expenses incurred by Manufacturer or its assignee, including reasonable attorney's fees, and to collect said judgment out of any of the Railroad's property.

The Manufacturer may at its election (and, if before sale or before full performance of this agreement all costs and expenses of the Manufacturer incidental to any such default and to the enforcement by the Manufacturer of the provisions hereof, including reasonable attorney's fees, and all sums which shall then have become due and payable by the Railroad hereunder, other than such part of said purchase price as shall have become due only because of a declaration under this paragraph as aforesaid, shall have been paid by the Railroad, and all other existing defaults shall have been remedied, or provisions therefor satisfactory to the Manufacturer shall have been made, then and in every such case the Manufacturer may waive any such event of default and its consequences and rescind and annul any such declaration or termination by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration or termination had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this agreement and that no such waiver, rescission or annulment shall limit or affect the Manufacturer's right, upon any other default, or impair any right or remedies consequent thereon.

18. Remedies. If the Railroad makes default as hereinabove provided, then at any time after such notice of declaration of default and during the continuance of such default the Manufacturer may, without further notice or demand except to the extent necessary in order to comply with

any legal requirements, take or cause to be taken by its agent or agents immediate possession of the Cabooses, or any of them, and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Railroad 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 the use and possession of the Railroad and for such purpose may enter upon the Railroad's premises where the Cabooses may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available track-age and other facilities or means of the Railroad, with or without process of law; and the Railroad shall deliver the Cabooses with all replacements, improvements, equipment, attachments and accessories thereof, at its own cost at such place or places on its railroad as the Manufacturer may reasonably designate and for such purpose move the Cabooses in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Manufacturer shall have the right to store the same upon the premises of the Railroad without charge until the Manufacturer shall desire to remove the same therefrom but not in excess of six months. It is hereby expressly agreed by the Railroad that performance of this agreement to deliver the Cabooses as hereinbefore provided is of the essence of the agreement between the parties and that, upon application to any court of equity having

jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Railroad requiring specific performance hereof. It is further expressly agreed by the Railroad that until the Manufacturer shall have given notice of its election to retain possession of the Cabooses or until the sale of the Cabooses as hereinafter provided in this Article 18, the Railroad shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Article 4 hereof.

If the Railroad makes default, as hereinbefore provided, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Cabooses as is hereinbefore in this Article 18 provided) may at its election retain the Cabooses as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Railroad's rights in the Cabooses will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Cabooses by the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Cabooses, or any of them, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Railroad, or of any other party claiming by, through or under it at law or in equity, at public or private sale and

with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Cabooses, shall be credited on the amount due to the Manufacturer under the provisions of this agreement, including taxes and other charges imposed upon the Manufacturer in connection with said Cabooses. Written notice of the Manufacturer's election to retain the property for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad at 701 Commerce Street, Dallas, Texas 75202, at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as hereinbefore provided; and if no such notice is given, the Manufacturer shall be deemed to have elected to sell the Cabooses in accordance with the provisions of this Article 18.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may fix, 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 Manufacturer may determine in compliance with any such legal requirements, provided that the Railroad shall be given written notice of such sale as

provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad at 701 Commerce Street, Dallas, Texas 75202. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the Cabooses, or any of them, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in the next to the last paragraph of this Article 18), and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Railroad hereunder.

Each and every power or remedy hereby specifically given to the Manufacturer shall be in addition to every other power or remedy hereby specifically given or not 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 Manufacturer. 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 Manufacturer 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 any acquiescence.

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

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

19. 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 Railroad 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.

The Railroad, 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 the Cabooses and to sell them and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder, except such notices as are expressly required by the terms of this agreement, and any and all rights of redemption.

20. Extension Not a Waiver. Any extension of time granted by the Manufacturer to the Railroad for the payment of any sum due under this agreement, whether that extension be for an immediate payment or for final payment, shall not be deemed a waiver of the title of the Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

21. Recording. The Railroad will cause this Agreement, any assignments hereof or of any interests herein and any supplements hereto or

thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Cabooses and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Manufacturer certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Railroad with respect thereto, satisfactory to the Manufacturer.

22. Payment of Expenses. The Railroad will pay all costs, taxes, charges and expenses, except the counsel fees of the Manufacturer, but including counsel fees of the first assignee, incident to the preparation, printing, execution, acknowledgment, filing, registering and recording of this agreement and of the first assignment by the Manufacturer of title to the Cabooses and of any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder, and of the replacement or replacements of said Cabooses.

23. Notice. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 701 Commerce

Street, Dallas, Texas 75202, or to such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Manufacturer shall be deemed to be properly served if delivered or mailed to the Manufacturer at P. O. Box 222, Kenton, Ohio 43326, or at such other address as may have been furnished in writing to the Railroad by the Manufacturer. Any notice hereunder to any assignee of the Manufacturer or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Manufacturer or the Railroad, as the case may be, by such assignee.

24. Execution of Counterparts. This agreement may be simultaneously executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together will constitute but one and the same contract, which will be sufficiently evidenced by any such original counterpart.

25. Article Headings. All article, paragraph or division headings are inserted for convenience only and will not affect any construction or interpretation of this agreement.

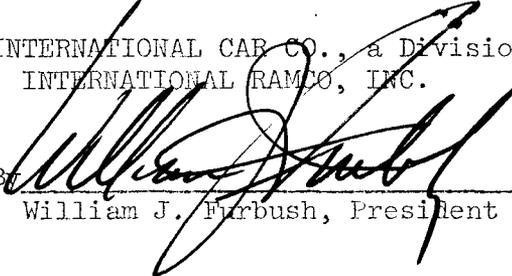
26. Effect and Modification of Agreement. This agreement of conditional sale, together with the specifications hereinabove referred to, constitutes the entire agreement between the Railroad and the Manufacturer with respect to the sale of the Caboose herein referred to. No variation or modification of this agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly

authorized officers of the Manufacturer and the Railroad.

27. Law Governing. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, International Car Co., a Division of International RAMCO, Inc., has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and Missouri-Kansas-Texas Railroad Company has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month, and year first above written.

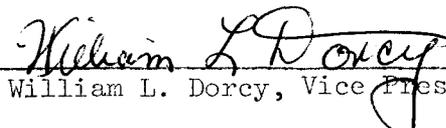
INTERNATIONAL CAR CO., a Division of
INTERNATIONAL RAMCO, INC.

By 
William J. Furbush, President

ATTEST:


Assistant Secretary

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By 
William L. Dorcy, Vice President

ATTEST:


Secretary

STATE OF OHIO)
) SS.:
COUNTY OF HARDIN)

On this 9th day of July, 1973, before me personally appeared William J. Furbush, to me personally known, who being by me duly sworn, says that he is President of INTERNATIONAL CAR CO., a Division of International RAMCO, inc., 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.

ROBERT M. GORDON
NOTARY PUBLIC, HARDIN CO., OHIO
My Commission Expires May 3, 1974

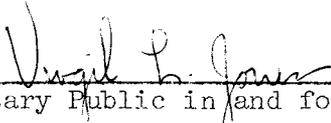
Notary Public in and for Hardin County,
Ohio.



My Commission expires:

STATE OF TEXAS)
) SS.:
COUNTY OF DALLAS)

On this 6th day of July, 1973, before me personally appeared William L. Dorcy, to me personally known, who being by me duly sworn, says that he is Vice-President of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


Virgil L. Jones **Virgil L. Jones**
Notary Public in and for Dallas County,
Texas

My Commission expires June 1, 1975.

AGREEMENT AND ASSIGNMENT, dated July 6, 1973, between INTERNATIONAL CAR CO., a Division of International RAMCO, INC., a corporation organized under the laws of the State of Illinois, with an office in Kenton, Ohio (hereinafter called the "Manufacturer"), FIRST CITY NATIONAL BANK OF HOUSTON, Houston, Texas (hereinafter called the "Bank"), and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation organized under the laws of the State of Delaware, with an office in the City of Dallas, Texas (hereinafter called the "Railroad").

WHEREAS, the Manufacturer and the Railroad have entered into a Conditional Sale Agreement dated as of July 6, 1973 (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of seven (7) Wide Vision Cupola Cabooses bearing Railroad's road numbers 136 - 142, both inclusive, to be constructed pursuant to Manufacturer's Specification No. 414 dated December 13, 1971, as revised under dates of July 18, 1972, January 9, 1973, and May 18, 1973; Manufacturer's Drawings 16E-14 and 16E-15 covering general arrangement and interior elevations of the said Cabooses and Manufacturer's Revised Proposal dated May 11, 1973, all as set forth in Railroad's Purchase Order No. D-65868, dated May 17, 1973.

NOW, THEREFORE, this Agreement and Assignment Witnesseth that in consideration of the sum of one dollar (\$1.00) and other good and valuable consideration paid by the Bank to the Manufacturer, the receipt

of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Bank, its successors and assigns, all the right, title and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive the initial cash payments specified in Article 3 thereof, reimbursement for taxes as provided in Article 4 thereof) and all the right, title and interest of the Manufacturer in and to each Caboose in respect of which the Bank shall pay to the Manufacturer the purchase price thereof (provided, however, that the Bank shall not be required to pay the Manufacturer any amount on account of such purchase price in excess of \$180,000.00, the excess if any over \$180,000.00 for all Caboosees being represented by the Railroad's initial cash payment to the Manufacturer provided for in Article 3 of the Conditional Sale Agreement, or if less than seven Caboosees are delivered by Manufacturer, then the Bank shall not be required to pay any amount of such purchase price in excess of \$28,500.43 for each such Caboose so delivered), pursuant to Article 3 thereof (such Caboosees being hereinafter called the "Caboosees") and in and to any and all amounts which may become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement on account of the purchase price of each Caboose and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement excluding

the initial cash payment, together with all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Bank to transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the Cabooses or in respect of its obligations contained in Articles 8 and 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligation to the Manufacturer or the Bank under Articles 3, 14, and 16 of the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad in respect of the Cabooses shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby irrevocably authorizes and empowers the Bank, 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 Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Bank.

2. The Manufacturer will construct the Cabooses in full and complete accordance with the Conditional Sale Agreement and will deliver them on completion to the Railroad free of all claims, liens and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; notwithstanding this 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 the Manufacturer. The Manufacturer further covenants that it has good and lawful right to sell the Cabooses as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever based on claims originating prior to the delivery of the Cabooses by the Manufacturer to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Bank to the purchase price, less the amount of the initial cash payment, if any, made by the Railroad, of each Caboose accepted by the Railroad, and interest thereon, as well as any other rights which have been assigned hereunder, shall not be

subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect of the manufacture or delivery of the Cabooses or under Articles 8 and 14 of the Conditional Sale Agreement nor subject to any defense, off-set, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Manufacturer or the successor or successors to its manufacturing business. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing properties and business and shall not be enforceable against the Bank or any party or parties in whom title to the Cabooses or any of them or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or transfer or of successive sales, assignments or transfers; and the Manufacturer will save harmless and indemnify the Bank from any expense, losses or damage suffered by reason of any defense, set-off, counterclaim or recoupment of Railroad resulting from the breach by Manufacturer of any terms or conditions of said Conditional Sale Agreement. The Manufacturer will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the use of any patented article on the Cabooses at the time of delivery, except with regard to any appliances, devices or materials specified

or required by the Railroad and not included in the Manufacturer's standard specifications.

4. The Manufacturer will cause to be plainly, distinctly, permanently and conspicuously stenciled on each side of each Caboose, at the time of delivery of each of the Caboosees to the Railroad, marking bearing the words in letters not less than one inch in height:

"FIRST CITY NATIONAL BANK OF HOUSTON,
HOUSTON, TEXAS, OWNER"

5. Upon request of the Bank, its successors and assigns, the Manufacturer will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Manufacturer therein or in the Caboosees therein described.

6. The Bank will pay to Manufacturer following delivery to and acceptance by Railroad of said Caboosees the full purchase price of said Caboosees as stated in the Conditional Sale Agreement up to the amount of \$180,000.00 upon receipt by the Bank of the following documents in form and substance satisfactory to it, payment to be made within five days following receipt of said documents:

(a) A Bill of Sale from the Manufacturer to the Bank, transferring to the Bank title to all Caboosees so delivered and warranting said title to be free, as of the time of delivery to the Railroad, of all liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificates of Acceptance signed by an authorized representative of the Railroad stating that the Caboose covered by such Certificate have been inspected and accepted by it on behalf of the Railroad as conforming in all respects to the requirements and provisions of the Conditional Sale Agreement, and further stating that there was plainly, distinctly, permanently and conspicuously stenciled on each side of each Caboose at the time of its acceptance the words in letters not less than one inch in height:

"FIRST CITY NATIONAL BANK OF HOUSTON,
HOUSTON, TEXAS, OWNER"

7. The Bank may assign its rights under the Conditional Sale Agreement, as a whole, in respect of all or any designated number of Caboose, including the right to receive any payments due or to become due to it from the Railroad thereunder in respect to such Caboose. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

8. The Manufacturer hereby:

(a) represents and warrants to the Bank, its successors and assigns, that the Conditional Sale Agreement was lawfully executed by the Manufacturer for a valid consideration and that it is a valid existing agreement and, according to its terms, binding upon the parties thereto and that said agreement is now in force without amendment thereto; and

(b) covenants and agrees that it will from time to time and at all times, at the request of the Bank or its successors or assigns, make, execute and deliver all such further instruments or 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; and

(c) represents and warrants to the Bank, its successors and assigns, that no payments (except the initial cash payments in amount equal to excess of final purchase price of all Cabooses over the sum of \$180,000.00) have been made by the Railroad to the Manufacturer under said Conditional Sale Agreement.

9. The Railroad agrees that if as a result of the performance of this Agreement and Assignment, the Conditional Sale Agreement, or as a result of the Cabooses or the use or operation thereof or other activities resulting from the existence or performance of this Agreement and Assignment or the Conditional Sale Agreement, any liens, claims, demands, losses, costs, or damages of any kind or character are asserted, made, or filed through any claim, action, suit or other proceeding, including all claims for personal injuries, death and property loss, or damage of any person, firm, or corporation against either Railroad or Bank, or both, Railroad

will indemnify and hold harmless Bank by assuming the defense of Bank, and furnishing all necessary and proper efforts to investigate and defend against the actions, suits, claims, or other proceedings brought against Bank, paying all costs and expenses incurred in connection with such investigation and defenses and any amount required to satisfy any judgment, claim, lien, or other demand asserted, without respect to whether Bank, its agents, servants, employees, contractors, or subcontractors were negligent or in any way caused the accident, or occurrence out of which the claim, demand, lien, or suit originated, *and* ~~100~~ such obligation of Railroad, *shall* ~~which~~ exist even though the claim, demand, lien, or suit arises solely due to the acts or omissions of Bank, its agents, servants, or employees, or concurrently or jointly with anyone else. Railroad shall further pay all costs, expenses, and attorneys' fees incurred in connection with any suit brought to enforce this indemnity agreement.

This Agreement and covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Cabooses, as provided in Article 5 of the Conditional Sale Agreement, or the termination of the Conditional Sale Agreement in any manner whatsoever. The Railroad will bear the risk and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Cabooses.

It is specifically agreed between the parties to this Agreement and Assignment that the indemnity agreement and covenants contained in this ^{article} ~~paragraph~~ are cumulative as to any other rights of Bank to indemnify under this Agreement and Assignment and ^{the} Conditional Sale Agreement and no such other indemnity agreement shall be limited hereby or be limiting hereon, but all such rights granted to the Bank are cumulative.

10. It is agreed that all sums, both principal and interest, due hereunder shall be paid by the Railroad to said Bank at its place of business in Houston, Harris County, Texas.

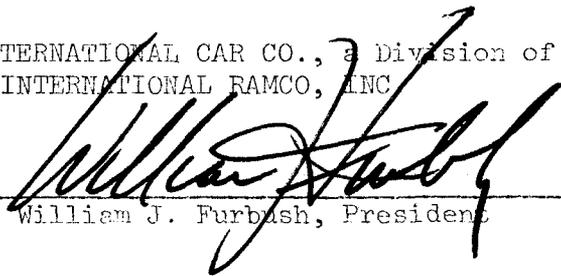
11. The Railroad will have this Assignment filed, registered and recorded in the same manner as provided in Article 21 of the Conditional Sale Agreement hereby assigned.

12. This Agreement and Assignment may be simultaneously 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. The Bank agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad. Although this Agreement and Assignment is dated for convenience as of July 6, 1973, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

13. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Texas.

IN WITNESS WHEREOF, the Manufacturer, the Bank and the Railroad Company have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, as of the day and year first above written.

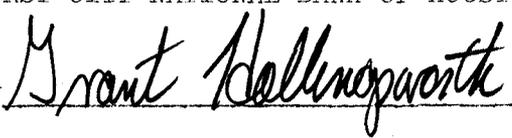
INTERNATIONAL CAR CO., a Division of
INTERNATIONAL RAMCO, INC

By 
William J. Furbash, President

ATTEST:


Assistant Secretary

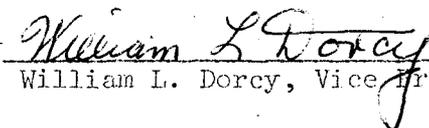
FIRST CITY NATIONAL BANK OF HOUSTON

By 

ATTEST:


Assistant Secretary
Vice President and Cashier

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By 
William L. Dorcy, Vice President

ATTEST:


Secretary

STATE OF OHIO)
) SS.:
COUNTY OF HARDIN)

On this 9th day of July, 1973, before me personally appeared William J. Furbush, to me personally known, who, being by me duly sworn, says that he is President of INTERNATIONAL CAR CO., a Division of International RAMCO, Inc., that one of the seals affixes 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.

ROBERT M. GORDON
NOTARY PUBLIC, HARDIN CO., OHIO
My Commission Expires May 3, 1977.

Notary Public in and for Hardin County,
Ohio

Robert M. Gordon

My Commission expires:

STATE OF TEXAS)
) SS.:
COUNTY OF HARRIS)

On this day of July, 1973, before me personally appeared
GRANT Hollingsworth to me personally known, who, being by
me duly sworn, says that he is a Vice President
of FIRST NATIONAL BANK OF HOUSTON, Houston, Texas, a national bank-
ing association, that one of the seals affixed to the foregoing
instrument is the seal of said association, that said instrument was
signed and sealed on behalf of said association by authority of its
Board of Directors, and he acknowledged that the execution of the
foregoing instrument was the free act and deed of said association.

Blanche S. Sutcler

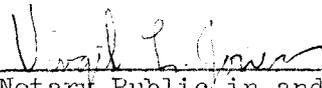
Notary Public in and for Harris County,
Texas

My Commission expires June 1, 1975.

BLANCHE S. SUTCLER
Notary Public in and for Harris County, Texas
My Commission Expires June 1, 1975

STATE OF TEXAS)
) SS.:
COUNTY OF DALLAS)

On this 6th day of July, 1973, before me personally appeared William L. Dorcy, to me personally known, who, being by me duly sworn, says that he is Vice-President of MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, that one of the seals affixed to the foregoing 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.


Virgil L. Jones
Notary Public in and for Dallas County,
Texas

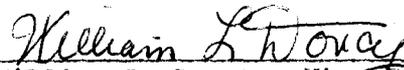
My Commission expires June 1, 1975.

ACKNOWLEDGMENT OF NOTICE OF
ASSIGNMENT

Missouri-Kansas-Texas Railroad Company hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment.

Dated July 6, 1973.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By 
William L. Dorcy, Vice President