

C O N D I T I O N A L S A L E A G R E E M E N T

Dated as of April 29, 1974

Between

W H I T E H E A D & K A L E S C O M P A N Y

and

M I S S O U R I - K A N S A S - T E X A S
R A I L R O A D C O M P A N Y

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For 36 Auto Racks

INTERSTATE COMMERCE COMMISSION

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A G R E E M E N T A N D A S S I G N M E N T

Dated as of April 29, 1974

AMONG

W H I T E H E A D & K A L E S C O M P A N Y

T E X A S B A N K & T R U S T
C O M P A N Y O F D A L L A S

and

M I S S O U R I - K A N S A S - T E X A S

THIS AGREEMENT, dated as of April 29, 1974, by and between WHITEHEAD & KALES COMPANY, a corporation organized under the laws of the State of Michigan with principal office in Detroit, Michigan (hereinafter called "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 "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 "Rack" and more than one or all of which are hereinafter referred to as "Racks") as follows:

Thirty-six (36) Racks to be mounted on railroad flat cars to be furnished by Railroad, of two separate designs, namely:

- (a) Thirty (30) carsets Whitehead & Kales Lo-Tri-Pak auto racks, Model AB-15146, to be mounted on TTX low deck cars, to be fitted with sixty (60) Ford tie-down devices;
- (b) One (1) carset Whitehead & Kales Lo-Tri-Pak auto rack, Model AB-15146, to be mounted on TTX low deck car, to be fitted with seventy-two (72) American Motors tie-down devices; and
- (c) Five (5) carsets Whitehead & Kales Model AB-15145 standard tri-level superstructure racks to be mounted on TTX BSH 11 standard height flush deck flat car, to be fitted with 60 Ford tie-down devices.

thirty-one (31) said Racks to be paneled with 22 gauge galvanized screening 42" high on "A" deck, 48" high on "B" deck, and 24" high on "C" deck, and five (5) Racks to be paneled with same material 48" high on "A" and "B" decks and 24" high on "C" deck; all said Racks to be manufactured in accordance with specifications set forth in Railroad's Purchase Order D-69268 dated June 26, 1973, as supplemented by amendment to Purchase Order D-69268, dated April 17, 1974, herein called the "Specifications" and appropriately mounted and affixed to the type flat cars above described.

2. DELIVERY. The Manufacturer will deliver Racks to the Railroad properly attached to said flat cars free on tracks at the Manufacturer's plant at Detroit, Michigan, not later than April 30, 1974. Any racks not delivered and accepted on or before that date shall be excluded herefrom. The serial number of each such Rack and the road number of the flat car to which such Rack will be attached is set forth on Exhibit "A" attached hereto and hereby made a part hereof.

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

The Manufacturer's obligation as to time of delivery is subject to delays resulting from causes beyond the Manufacturer's reasonable control, including but not limited to acts of God, acts of government such as embargos, 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, but nothing contained herein shall obligate the Railroad to accept delivery of any Racks after the said final cut-off date of April 30, 1974.

The Railroad shall accept the Racks following construction and delivery by Manufacturer. Each of the Racks prior to acceptance shall be inspected by an authorized representative of the Railroad. If such Rack conforms to specifications, such representative of the Railroad shall execute a certificate of inspection and a certificate of acceptance (hereafter called the "Certificate of Inspection" and "Certificate of Acceptance") showing that such Rack has been inspected and accepted by him on behalf of the Railroad as conforming in all respects to the requirements and provisions of this agreement. Such Certificate of Acceptance shall constitute conclusive evidence that the Rack conforms to specifications and is acceptable to the Railroad in all details. The Certificates of Inspection and Acceptance shall be delivered to the Manufacturer upon the delivery of the Rack to the Railroad. Any number of said Racks may be included in any such Certificates of Inspection and Acceptance.

3. PURCHASE PRICE AND PAYMENT. The purchase price of Lo-Tri-Pak Racks, Model AB-15146 with Ford tie-down devices is Ten Thousand Six Hundred Fifty-eight and no/100 Dollars (\$10,658.00) each, Racks installed free on board cars furnished by Railroad at Manufacturer's plant at Detroit, Michigan, and the purchase price of the single same model Rack with American Motors tie-down devices is Ten Thousand Seven Hundred Ninety-three and no/100 Dollars (\$10,793.00) each, and the purchase price of Model AB-15145 standard tri-level superstructure Racks is Eight Thousand Three Hundred Seventy-eight and no/100 Dollars (\$8,378.00) each, likewise so delivered, or a total purchase price for the thirty-six (36) Racks of Three Hundred Seventy-two Thousand Four Hundred Twenty-three and no/100 Dollars (\$372,423.00), less deduction of One Thousand One Hundred Ninety and no/100 Dollars (\$1,190.00) for decals supplied by Railroad.

Conditional only upon the receipt and acceptance of the Racks, 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 Detroit, Michigan, or at such bank or trust company in the United States of America as the Manufacturer may designate, the aforesaid purchase price of the Racks as follows:

- (a) \$89,633.00 of actual full purchase price shall be the initial cash payment and paid by Railroad to Manufacturer within ten (10) days of receipt of invoices therefor.
- (b) \$281,600.00 of actual full purchase price of said Racks (being the deferred purchase price thereof) shall be paid by Railroad in forty-four (44) consecutive monthly installments commencing on June 1, 1974, of Six Thousand Four Hundred and no/100 Dollars (\$6,400.00) per month plus interest, with the final installment due and payable January 1, 1978, at which time all amounts of principal and interest shall be finally due and payable. The principal balance shall bear interest at a rate until maturity which shall, from time to time be one per cent (1%) above the prevailing commercial prime borrowing rate established by Texas Bank & Trust Company of Dallas; provided however, that any change of rate shall only become effective on the 1st day of the next calendar month after the calendar month in which such change occurred, and provided further, that nothing contained herein shall require the payment of interest in excess of the highest legal rate permitted in the State of Texas.

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- (c) In the event that less than all of said Racks shall be delivered and accepted by Railroad, the total purchase price in (a) and (b) above shall be reduced by the unit price of the Racks so undelivered shown in Section 3 above.

The Railroad will pay interest at a rate of fourteen percent (14%) per annum on all amounts of principal and interest, remaining unpaid after the same become due and payable hereunder.

In the event of any change or modification made in the specifications, the amount by which such change or modification increases or decreases the cost of the Racks shall be added to or subtracted from, as the case may be, the price of the Racks.

The Railroad shall have the right to prepay the unpaid balance due on all of the Racks hereunder at any time without penalty.

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 Racks. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Racks 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 Racks are operated by the Railroad and will keep at all times all and every part of the Racks 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 or its assignees hereby does retain the full legal title to and property in the Racks 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 Racks to and the possession and use thereof by the Railroad as herein provided. Any and all replacements of the Racks and of parts thereof or of any replacements thereof and additions thereto shall constitute accessions to the Racks and be subject to all the terms

and conditions of this agreement and included in the term "Racks" 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 Racks as herein provided, subject to the terms and conditions herein contained.

The Railroad will as soon as practicable following delivery of said Racks cause each Rack to be kept numbered with its identifying number and will keep and maintain plainly, distinctly, permanently, and conspicuously stenciled on each side of each Rack as identification the name of the Manufacturer or of the Manufacturer's assignee, as the case may be, and rack number in letters of the largest size required by law in any of the states in which the Racks shall be operated, but in any event, in letters not less than one inch in height followed by the word "Owner" or other appropriate words designated by the Manufacturer. The Railroad will not change the numbers of the Racks 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 Racks or any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad may cause the Racks 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 Racks, 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 Racks 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 Racks 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 Racks.

No invoice and no certificate of acceptance issued prior to the complete performance of this contract shall operate to pass title to said Racks.

6. REPLACEMENT. In the event of loss or destruction of or irreparable damage to any of the Racks 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 Rack or Racks or shall replace each

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such Rack at its own cost with a Rack of similar type and of substantially as good material or 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 Rack replaced at the time of replacement. The Railroad will cause any such Rack to be marked as provided in Article 5 hereof and to be numbered with the same number as the Rack so replaced. Any and all such replacements of Rack or any of them and all and any parts shall constitute accessions to the Racks and shall be subject to all of the terms and conditions of this agreement as though part of the original Rack delivered hereunder and included in the word "Racks" as used in this agreement. Title to all such replacement Rack 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. INSURANCE. The Railroad will, at all times at its own expense, keep the Racks insured (with loss payable to the Manufacturer or its assignee during the existence of this Agreement or the Railroad as its interest may appear) in a company approved by the Manufacturer any such policy of insurance against loss, damage, or destruction shall not contain a deductible provision in excess of Two-Hundred And Fifty Thousand and no/100 Dollars (\$250,000.00), and Railroad agrees that it will promptly make up any differences between any amounts paid under such policy and the then unpaid balances applicable to the Rack or Racks with respect to which such monies are paid under any policy. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Manufacturer until replacement or repair of the Rack or Racks lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Railroad is not then in default in any of the obligations hereunder, the Manufacturer shall pay over such money to the Railroad. Any monies receivable by or payable to the Railroad from any railroad or other person or corporation because of loss or destruction of or damage to any such Rack or Racks shall be paid over to the Manufacturer to be held and applied by it as aforesaid. Upon the discharge by the Railroad of all of its obligations under this contract the Manufacturer will without cost to the Railroad transfer to the Railroad all then unexpired policies of insurance.

8. MAINTENANCE AND REPAIR. The Railroad will at all times maintain the Racks in good order and repair at its own expense.

9. MANUFACTURER'S WARRANTY OF MATERIAL AND WORKMANSHIP. The Manufacturer guarantees that the Racks will be built in accordance with the Specifications and warrants the Racks to be free from defects in material and workmanship (except as to specialties incorporated therein which shall be specified by the Railroad and not manufactured by the Manufacturer) under normal use and service; the Manufacturer's obligation under this Article 9 being limited to making good at its plant any part or parts of any of the Racks which shall, within one year after delivery of such Rack to the Railroad be returned to the Manufacturer with transportation charges prepaid and which the Manufacturer's examination shall disclose to its satisfaction to have been thus defective. The foregoing warranty of the Manufacturer

is expressly in lieu of all other warranties expressed or implied and of all other obligations or liabilities on the part of the Manufacturer, except for its obligations under Articles 1, 2, and 15 hereof, and the Manufacturer neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Racks, except as aforesaid.

10. 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 Racks 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 Racks. In the event that the said laws or rules require the alteration of the Racks, 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 Racks.

11. 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 Racks in actual service, the numbers and the description of such Racks as may have been destroyed and replaced by others, and the then condition and state of repair of the Racks, and such other information regarding the Racks 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 Racks 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 Racks 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 Racks and the satisfactory repair thereof.

The Manufacturer may, but shall be under no obligation to, inspect the Racks at any reasonable time or times until the total purchase price herein provided has been fully paid by the Railroad.

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12. 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 Racks 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 Racks may be used also upon connecting and other railroads and car ferries in the usual interchange of traffic, from and after delivery of the Racks by the Manufacturer to the Railroad, but only, upon and subject to all terms and conditions of this Agreement.

13. 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 Racks, 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 Racks. The Railroad shall notify the Manufacturer of any contest it makes of any charges, and, in the event the Manufacturer deems that its rights in the Racks 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 Racks shall be secured by and under this contract.

14. 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 Racks 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 Racks, 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 Racks; provided, however, that the Manufacturer and any successor or successors to its manufacturing property and business shall not as to the Racks, be relieved from its guaranty covering workmanship and material hereinbefore in Article 9 set forth.

15. PATENT INDEMNITIES. Patent Indemnities. Except in cases of articles or materials specified by the Railroad and not manufactured by the Manufacturer and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Manufacturer, the Manufacturer agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of the Racks because of the

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use in or about the construction or operation of any of the Racks of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Manufacturer from and against any and all liability, claims, costs, charges, and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Manufacturer because of the use in or about the construction or operation of any of the Racks or any article or material specified by the Railroad and not manufactured by the Manufacturer or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Manufacturer which infringes or is claimed to infringe on any patent or other right. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner!

Manufacturer shall assign to Railroad any and all rights to be indemnified from claims of patent infringement which Manufacturer obtains from the Manufacturers of any articles or materials specified by the Railroad which are incorporated into the Racks and which are not manufactured by Manufacturer and are purchased from others.

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

17. 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 Racks to any other firm, person, or corporation without first obtaining written consent of the Manufacturer or its assigns, to such sale, assignment or transfer.

18. 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

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- (b) The Railroad shall, for more than thirty (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) The bankruptcy or insolvency or assignment for the benefit of the creditors of the Railroad, or the appointment of a receiver for the Railroad or any of its properties (unless such receiver is discharged within 20 days following such appointment) if this agreement be covered by any such proceedings; or
- (d) 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 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 Racks, together with interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the entire sum shall bear interest at the rate of fourteen percent (14%) 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 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.

19. 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

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its agent or agents immediate possession of the Racks, 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 19 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 Racks may be located, and may use and employ in connection with such removal any supplies, services, and aids, and any available trackage and other facilities or means of the Railroad, with or without process of law; and the Railroad shall, at its sole costs and expense, assemble the Cars to which the Racks are attached at a place on its line to be designated by the Manufacturer or its assigns and remove and store said Racks at no charge to Manufacturer for a period of 90 days. It is hereby expressly agreed by the Railroad that performance of this agreement to deliver the Racks 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 Racks or until the sale of the Racks as hereinafter provided in this Article 19, the Railroad shall not be released from any of its obligations hereunder including Articles 4 and 7 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 Racks as is hereinbefore in this Article 19 provided) may at its election retain the Racks 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 Racks will thereupon terminate and all payments made by the Railroad may be retained by the Manufacturer as compensation for the use of the Racks by the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Racks, 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 proceeds of such sale, less the attorney's fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing, and selling the Racks, 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 Racks. Written notice of the Manufacturer's election to retain the property for its own use may be given to

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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 Racks in accordance with the provisions of this Article 19.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such time or times and place or places 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 the above address. 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 Racks, 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 19) 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 now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the 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 attorney's fees 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 the amount thereof shall be included in such judgment.

20. 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 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 Racks 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.

21. 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 as a waiver of the title of the Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

22. 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 all relevant provisions 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 Racks 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 certificate 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.

23. PAYMENT OF EXPENSES. The Railroad will pay all costs, taxes, charges, and expenses, except the counsel fees of the Manufacturer, incident to the preparation, printing, execution, acknowledgment, filing, registering, and recording this agreement and of the first assignment,

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.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By 
Vice President

ATTEST:


Assistant Secretary

WHITEHEAD & KALES COMPANY

By 
Vice President

ATTEST:

Secretary

CONDITIONAL SALE
AGREEMENT

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 26TH day of April, 1974, before me personally appeared KARL R. ZIEBARTH, to me personally known, who being by me duly sworn, says that he is a 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.

R. E. McCormick
Notary Public in and for Dallas County,
Texas

My Commission expires
June 1, 1975

TEXAS
STATE OF ~~MICHIGAN~~)
)
COUNTY OF Dallas)

On this 26th day of April, 1974, before me personally appeared CHARLES E. WIESER, to me personally known, who being by me duly sworn, says that he is Vice President of WHITEHEAD & KALES COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. E. McCormick
Notary Public in and for Dallas
County, ~~Michigan~~ Texas

My Commission expires
June 1, 1975

RACK SERIAL NUMBERS AND MKT NUMBERS
AND
TRAILER TRAIN CARS ON WHICH RACKS ARE MOUNTED

<u>NUMBER</u>	<u>RACK SERIAL NO.</u>	<u>MKT RACK NO.</u>
X 802572	52321-22	99
X 802652	52285-86	79
X 802653	52287-88	81
X 802679	52299-300	88
X 802680	52297-98	87
X 802681	52305-06	91
X 802683	52307-08	92
X 802684	52303-04	90
X 802688	52293-94	85
X 802689	52289-90	82
X 802704	52263-64	70
X 802708	52281-82	77
X 802712	52283-84	76
X 802713	52279-80	78
X 802717	52315-16	96
X 802718	52313-14	95
X 802726	52319-20	98
X 802731	52295-96	86
X 802733	52291-92	84
X 802734	52311-12	94
X 802735	52309-10	93
X 802736	52317-18	97
X 802738	52301-02	89
X 802766	52269-70	73
X 802825	52273-74	75
X 802826	52277-78	80
X 802832	52275-76	74
X 802857	52271-72	83
X 802864	52267-68	72
X 802865	52261-62	69
X 802866	52265-66	71
RX 964982	51321-22	107
RX 941638	51323-24	108
RX 941879	51317-18	105
RX 941883	51319-20	106
RX 941889	51315-16	104

THIS AGREEMENT AND ASSIGNMENT dated as of April 29, 1974, between WHITEHEAD & KALES COMPANY, a corporation organized under the laws of the State of Michigan with principal office in Detroit, Michigan (hereinafter called "Manufacturer"); TEXAS BANK & TRUST COMPANY OF DALLAS (hereinafter called "Bank"); and MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, a corporation organized under the laws of Delaware, with an office in the City of Dallas, Texas (hereinafter called "Railroad"):

WITNESSETH:

WHEREAS, the Manufacturer and the Railroad have entered into a Conditional Sale Agreement dated as of April 29, 1974, covering the manufacture sale, and delivery of thirty-six (36) Racks to be mounted on railroad flat cars, to be furnished by Railroad, and further equipped as described in said Conditional Sale Agreement (a counterpart of which is prefixed hereto) for aggregate consideration of THREE HUNDRED SEVENTY-ONE THOUSAND TWO HUNDRED THIRTY-THREE AND NO/100 DOLLARS (\$371,233.00) to be paid at the times and according to the terms and conditions set forth in said Conditional Sale Agreement.

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 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 [a] thereof), and all the right, title, and interest of Manufacturer in and to each Rack until the full amount of principal and interest set forth in Article 3 (b) shall have been paid by Railroad to Bank, 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 or 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 Racks or in respect of its obligations contained in Articles 9 through 15 of the Conditional Sale Agreement, or relieve the Railroad from any of its obligations to the Manufacturer or the Bank under the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Railroad in respect of the Racks 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 at demand, sue for, collect, receive, and enforce any and all sums to which the Bank is or may become entitled under this Agreement 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 Manufac

and lawful right to sell the Racks 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 Racks 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 full amounts set forth in Article 3(b) of the Conditional Sale Agreement 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 Racks nor subject to any defense, offset, 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. 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 the 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 Racks 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 Railroad will cause to be plainly, distinctly, permanently, and conspicuously stenciled on each side of each rack, at the time of delivery or as soon as practicable thereafter of each of the Racks to the Railroad, suitable marking with words in letters not less than one inch in height:

"TEXAS BANK & TRUST COMPANY OF DALLAS, 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 Racks therein described.

6. Promptly after all of the Racks are inspected and accepted by the Railroad, pursuant to the Conditional Sale Agreement, Manufacturer will be paid in accordance with provisions and closing procedures set forth in Article 3 of the Conditional Sale Agreement (except that the Bank will at that time pay or cause to be paid to the Manufacturer in one lump sum the full amount of the deferred purchase price of said Racks in consideration of this assignment), and the Bank will receive the following documentation.

- (a) A Bill of Sale from the Manufacturer to the Bank, transferring to the Bank title to all Racks 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) A Certificate of Acceptance signed by an authorized representative of the Railroad stating that the Racks 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.

7. The Bank may assign its rights under the Conditional Sale Agreement, as a whole in respect of all or any designated number of the Racks, including the right to receive any payments due or to become due to it from the Railroad thereunder in respect to such Racks. 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 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; and
- (c) represents and warrants to the Bank, its successors and assigns that no payments have been made to Manufacturer for performance of the terms of the Conditional Sale Agreement except those contracted to be made therein.

9. The Railroad will have this Assignment filed, registered, and recorded in the same manner as provided in Article 22 of the Conditional Sale Agreement hereby assigned.

10. 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.

11. 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.

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

By *J. P. Roberts*
Vice President

ATTEST:

J. B. ...
Assistant Secretary

WHITEHEAD & KALES COMPANY

By *Charles E. Wiser*
Vice President

ATTEST:

Secretary

TEXAS BANK & TRUST COMPANY OF DALLAS

By *D. C. ...*
Vice President

ATTEST:

Mary Cahill
Assistant Cashier

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 26TH day of April, 1974, before me personally appeared KARL R. ZIEGARTH, to me personally known, who being by me duly sworn says that he is a 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 that he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. E. Mc Cormick
Notary Public in and for Dallas
County, Texas

My Commission expires June 1, 1975.

STATE OF TEXAS)
~~MICHIGAN~~)
COUNTY OF DALLAS)

On this 26th day of April, 1974, before me personally appeared CHARLES F. WIEGER, to me personally known, who being by me duly sworn, says that he is Vice President of WHITEHEAD & KALES COMPANY; that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

R. E. Mc Cormick
Notary Public in and for Dallas
County, ~~Michigan~~ Texas

My Commission expires June 1, 1975.

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 26th day of April, 1974, before me personally appeared JOHN A. COLE, to me personally known, who being by me duly sworn, says that he is a Vice President of TEXAS BANK AND TRUST COMPANY OF DALLAS; 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.

Barbara Thomas
Notary Public in and for Dallas
County, Texas

My Commission expires June 1, 1975.