LOUISVILLE & NASHVILLE RAILROAD COMPANY

908 W. BROADWAY • LOUISVILLE, KENTUCKY 40201 • TELEPHONE (502) 587-5474

LAW DEPARTMENT

CHAUNCEY E. BRUMMER
ATTORNEY

No. 6-251A013
Date 9/7/76
Fee $ 50-
ICC Washington, D. C.

September 1, 1976

RECORDATION NO. 8464 Filed & Recorded
SEP 7 1976 -9 30 AM
INTERSTATE COMMERCE COMMISSION

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FEE OPERATION BR.

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

Dear Mr. Secretary:

There is transmitted to you herewith for filing and recordation, pursuant to Section 20c of the Interstate Commerce Act, counterparts of a Conditional Sale Agreement dated as of June 15, 1976, between Thrall Car Manufacturing Company, whose address is P. O. Box 218, Chicago Heights, Illinois 60411, and Louisville and Nashville Railroad Company, whose address is 908 West Broadway, Louisville, Kentucky 40201, and an Agreement and Assignment, dated as of June 15, 1976, between Thrall Car Manufacturing Company and Citibank, N.A., whereby Thrall Car Manufacturing Company assigned its rights under said Conditional Sale Agreement to Citibank, N.A., whose address is 399 Park Avenue, New York, New York 10022.

The Conditional Sale Agreement and the Agreement and Assignment cover 75 100-ton gondola cars bearing the Railroad Company's road numbers 26425 through 26499.

There has been no prior recordation of any document relating to the cars covered by said Conditional Sale Agreement.

Attached hereto is a draft in the amount of $50.00 payable to the Treasurer of the United States to cover the cost of filing and recording said Conditional Sale Agreement and Agreement and Assignment.

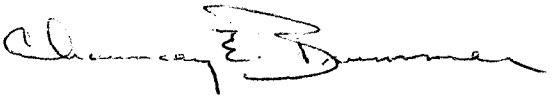
This letter of transmittal is signed by an officer of the Louisville and Nashville Railroad Company who has knowledge of the matters set forth herein.

Counterpart Paul Snyder

Kindly return the recorded counterparts of said Conditional Sale Agreement and Agreement and Assignment to:

Mr. Chauncey E. Brummer
Attorney
Louisville and Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40201

Respectfully yours,



Chauncey E. Brummer.

Attachments

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

9/7/76

Mr. Chauncey E. Brummer, Atty.
Louisville & Nashville Railroad Company
908 West Broadway
Louisville, Kentucky 40201

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 9/7/76 at 9:30am, and assigned recordation number(s) 8464

Sincerely yours,

Robert L. Oswald
Secretary

Enclosure(s)

SE-30
(5/76)

Counterpart No. 4
Of 5 Counterparts

RECORDATION NO. 8454 Filed & Recorded

SEP 7 1976 -9 20 AM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

CITIBANK, N.A.

CONDITIONAL SALE AGREEMENT dated as of June 15, 1976, between THRALL CAR MANUFACTURING COMPANY, a Delaware corporation (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Railroad).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

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

ARTICLE 1. *Assignment; Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the units of the Equipment and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), in accordance with the delivery schedule set forth in Schedule B hereto; *provided, however,* that the Builder shall not have any obligation to

deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder'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, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices (including the supplemental invoice or invoices hereinafter provided for) presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $1,647,600 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 20 consecutive equal (except as provided in the sixth paragraph of this Article 4 and except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 20, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented by the Builder may be for an estimated Purchase Price, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder for any increase in the Purchase Price; it being understood and agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in amount

not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of the Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Cut-Off Date (as hereinafter defined), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Cut-Off Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall, except as provided in the sixth paragraph of this Article 4, be payable semiannually on each April 20 and October 20, commencing on October 20, 1977, to and including April 20, 1987. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on October 20, 1977, to and including October 20, 1978, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the Alternate Base Rate, as defined in item 4 of Schedule A hereto (hereinafter called the Alternate Base Rate), per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on April 20, 1979, to and including October 20, 1981, shall bear interest from the respective closing dates on which such Indebtedness was incurred at the Alternate Base Rate, plus ¼ of 1% per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on April 20, 1982, to and including April 20, 1987, shall bear interest from the respective closing dates on which such Indebtedness was incurred at the Alternate Base Rate, plus ½ of 1% per annum. Such interest shall be payable, to the extent accrued, on April 20 and October 20 in each year, commencing April 20, 1977. If any date for payment of principal or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day and interest shall accrue to such next succeeding business day.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after August 1, 1976, and prior to the date set forth in Item 2 of Schedule A hereto [hereinafter called the Cut-Off Date]), not more than ten business days following presentation by the Builder to the Railroad of an invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated (for the actual number of days elapsed) on the basis of a 365-day year.

The Railroad will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof (i) at the Alternate Base Rate plus 1% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on October 20, 1977, to and including October 20, 1978, (ii) at the Alternate Base Rate plus 1¼% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on April 20, 1979, to and including October 20, 1981, and (iii) at the Alternate Base Rate plus 1½% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on April 20, 1982, to and including April 20, 1987.

All payments provided for in this Agreement shall be made in New York Clearing House funds and in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment delivery or transfer of title under the terms hereof (all such expenses, taxes, licens fees, assessments, charges, fines and penalties being hereinafter called impositions all of which impositions the Railroad assumes and agrees to pay on demand. Tl Railroad will also pay promptly all impositions which may be imposed upon tl Equipment delivered to it or for the use or operation thereof or upon the earnin arising therefrom or upon the Vendor solely by reason of its interest therein and v keep at all times all and every part of the Equipment free and clear of all impositi which might in any way affect the security interest of the Vendor or result in a l upon any part of the Equipment; *provided, however*, that the Railroad shall be ur no obligation to pay any impositions of any kind so long as it is contesting in g faith and by appropriate legal proceedings such impositions and the nonpayr thereof does not, in the opinion of the Vendor, adversely affect the interest or r of the Vendor in or to the Equipment or otherwise under this Agreement. If such impositions shall have been charged or levied against the Vendor directl

paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Security Interest in the Equipment.* The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except, in the case of locomotives, any communications, signal and automatic control equipment or devices having a similar use which have been added to any unit of Equipment by the Railroad the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body) and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. *Marking of the Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as designation that might be interpreted as a claim of ownership; *provided, however,* that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. *Casualty Occurrences.* In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $100,000, the Railroad shall, within 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied on or before the next instalment date for the payment of

Conditional Sale Indebtedness occurring more than 180 days following the date of such payment to the Vendor (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) to replace units suffering a Casualty Occurrence; and, in the event no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of Conditional Sale Indebtedness, as aforesaid. In case any money is applied to prepay indebtedness, it shall be so applied to reduce instalments thereafter falling due *pro rata.*

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; *provided, however,* that any such waiver shall apply only to the specific amount, if any, of the aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; *provided, further,* that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding any interest in any of the Conditional Sale Indebtedness then outstanding shall authorize such waiver in writing prior to the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered

hereunder and shall be included in the term "Equipment" as used in this Agreement; *provided, however,* that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith, in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of a Vice President, an Assistant Vice President, or the Controller or Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service and such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or better by NCO/Moody's Commercial Paper Division of Moody's

Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by, domestic commercial banks in the United States of America having total assets in excess of $1,000,000,000 or capital and surplus in excess of $100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to such portion of the Casualty Value of such Equipment for which payment shall not have been waived by the Vendor as hereinabove provided, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. *Maintenance; Compliance with Laws and Rules.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its

own expense; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. *Possession and Use.* The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others 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, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; *provided, however*, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interest upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent,

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

ARTICLE 13. *Railroad's Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. *Patent Indemnities; Builder's Warranty of Material and Workmanship.* Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder 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 Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combination, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by

the Railroad to effectuate more fully the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 3 of Schedule A hereto.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant, provided such railroad company shall have capital and surplus aggregating at least that of the Railroad immediately prior to such acquisition.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sales agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, not subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of any amount equal to the Conditional Sale Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Conditional Sale Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest

charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

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

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; 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, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. 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 extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other

payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further*, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the

Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate or rates per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor 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 Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or 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, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment 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 Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 908 West Broadway, Louisville, Kentucky 40201,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. *Law Governing.* The Railroad warrants that its chief place of business and its executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

By _____
Assistant Vice President

[CORPORATE SEAL]
Attest:

_____
Assistant Secretary

THRALL CAR MANUFACTURING COMPANY

By _____
Vice President

[CORPORATE SEAL]
Attest:

_____
Assistant Secretary

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON } SS.:

On this 30th day of August 1976, before me personally appeared N. H. Stier, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President, of LOUISVILLE AND NASHVILLE 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.

Norma J. Jones
Notary Public

[NOTARIAL SEAL]

My Commission expires March 4, 1977

STATE OF ILLINOIS
COUNTY OF COOK } SS.:

On this 2nd day of September 1976, before me personally appeared John P. Lynch, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING 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.

Teresa L. Lopez
Notary Public

[NOTARIAL SEAL]

My Commission expires MY COMMISSION EXPIRES JANUARY 7, 1977

SCHEDULE A

ITEM 1: THRALL CAR MANUFACTURING COMPANY
P. O. Box 218
Chicago Heights, Illinois 60411

ITEM 2: April 1, 1977

ITEM 3: The Builder warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Builder) and workmanship and design (except as to designs specified by the Railroad and not developed by the Builder) under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except for the patent indemnification included in Article 14 of the Agreement as aforesaid.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 3.

ITEM 4: Alternate Base Rate is the greater of the fluctuating Base Rate of Citibank or ½% of 1% above the latest three-week moving average interest rate payable on 90-119 day dealer-placed commercial paper as published weekly by the Federal Reserve Bank of New York, or if such publications shall be suspended or terminated, such three-week moving average interest rate determined by Citibank on the basis of quotations received by it from three New York commercial paper dealers of recognized standing, in each case adjusted to the nearest (or if none, to the next higher) ¼ of 1%.

SCHEDULE B

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity	Unit Base Price	Total Base Price	Road Numbers (Inclusive)	Estimated Time and Place of Delivery
100-Ton 52'6" Gondola Cars	GBSR	GN-C-100-52-138-A Revised	Chicago Heights, Illinois	75	$21,968	$1,647,600	26425 through 26499	Prior to October 15, 1976 At Builder's Plant

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

CITIBANK, N.A.

AGREEMENT AND ASSIGNMENT, dated as of June 15, 1976, between CITIBANK, N.A. (hereinafter called the Assignee), and THRALL CAR MANUFACTURING COMPANY (hereinafter called the Builder).

WHEREAS, the Builder and Louisville and Nashville Railroad Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

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

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof and remedies pertaining to the foregoing exceptions, which remedies shall not include the security interest of the Builder with respect to units of Equipment subsequent to delivery by the Builder of a bill of sale for such units against payment therefor pursuant to an initial invoice therefor as specified by Section 4 hereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder 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 Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, if any, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4)

of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel; *provided, however,* that only the documents specified in subsections (c) and (g)(i) of this Section must be delivered with respect to settlement for a supplemental invoice submitted with respect to Equipment previously settled for:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the Conditional Sale

Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement and this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement) arising from, through or under the Builder;

(f) an opinion of Messrs. Shearman & Sterling, counsel for the Assignee, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment are in substantially acceptable legal form, and the documents furnished at the Closing Date are substantially responsive to the requirements of this Section 4.

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time

and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and (ii) no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally; in giving the opinion specified in said subparagraphs (d) and (f), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said paragraph (f), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will, subsequent to payment by the Assignee to such Builder of the amounts required to be paid under Section 4 hereof, 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 Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

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

THRALL CAR MANUFACTURING COMPANY

By _____
Vice President

[CORPORATE SEAL]

Attest:

_____
Assistant Secretary

CITIBANK, N.A.

By _____
Vice President

[CORPORATE SEAL]

Attest:

_____
Assistant Secretary

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 3rd day of September 1976, before me personally appeared John P. Lynch, to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING 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.

Teresa L Lynch
Notary Public

[NOTARIAL SEAL]

My Commission expires MY COMMISSION EXPIRES JANUARY 7, 1977

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this day of 1976, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CITIBANK, N.A., 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

LOUISVILLE AND NASHVILLE RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of June 15, 1976.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

By _____
Assistant Vice President

CONDITIONAL SALE AGREEMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

CITIBANK, N.A.

CONDITIONAL SALE AGREEMENT dated as of June 15, 1976, between THRALL CAR MANUFACTURING COMPANY, a Delaware corporation (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and LOUISVILLE AND NASHVILLE RAILROAD COMPANY, a Kentucky corporation (hereinafter called the Railroad).

WHEREAS, the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the Equipment);

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

ARTICLE 1. *Assignment; Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its respective manufacturing properties and businesses.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the units of the Equipment and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B does not specify a place or places, at the place or places designated from time to time by the Railroad), in accordance with the delivery schedule set forth in Schedule B hereto; *provided, however,* that the Builder shall not have any obligation to

deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond such Builder'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, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; *provided, however,* that the Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Schedule B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the Builder and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on each Closing Date (as hereinafter defined) the amount, if any, by which (x) the Purchase Price of all units of the Equipment for which settlement has theretofore or is then being made, as stated in the invoice or invoices (including the supplemental invoice or invoices hereinafter provided for) presented in respect of such Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $1,647,600 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 20 consecutive equal (except as provided in the sixth paragraph of this Article 4 and except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (b) shall not, when divided by 20, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said instalments being hereinafter called the Conditional Sale Indebtedness).

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented by the Builder may be for an estimated Purchase Price, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Builder for any increase in the Purchase Price; it being understood and agreed by the Builder that any prior preliminary invoice or invoices presented by the Builder shall be in amount

not in excess of the final Purchase Price of such Group. If a supplemental invoice is presented to the Railroad by a Builder at least 10 days prior to any subsequent Closing Date with respect to any Group of the Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Builder after, or less than 10 business days prior to, the Closing Date when all units of the Equipment of the Builder shall have been delivered, accepted and settled for, but prior to the Cut-Off Date (as hereinafter defined), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice is presented by the Builder after the Cut-Off Date, it shall be paid in cash by the Railroad to the Builder in accordance with the terms of the original purchase order given by the Railroad and accepted by the Builder in respect of the Equipment.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall, except as provided in the sixth paragraph of this Article 4, be payable semiannually on each April 20 and October 20, commencing on October 20, 1977, to and including April 20, 1987. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on October 20, 1977, to and including October 20, 1978, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the Alternate Base Rate, as defined in item 4 of Schedule A hereto (hereinafter called the Alternate Base Rate), per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on April 20, 1979, to and including October 20, 1981, shall bear interest from the respective closing dates on which such Indebtedness was incurred at the Alternate Base Rate, plus ¼ of 1% per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on April 20, 1982, to and including April 20, 1987, shall bear interest from the respective closing dates on which such Indebtedness was incurred at the Alternate Base Rate, plus ½ of 1% per annum. Such interest shall be payable, to the extent accrued, on April 20 and October 20 in each year, commencing April 20, 1977. If any date for payment of principal or interest is not a business day, the payment otherwise payable on such date shall be payable on the next succeeding business day and interest shall accrue to such next succeeding business day.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after August 1, 1976, and prior to the date set forth in Item 2 of Schedule A hereto [hereinafter called the Cut-Off Date]), not more than ten business days following presentation by the Builder to the Railroad of an invoice or a supplemental invoice, and with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated (for the actual number of days elapsed) on the basis of a 365-day year.

The Railroad will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof (i) at the Alternate Base Rate plus 1% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on October 20, 1977, to and including October 20, 1978, (ii) at the Alternate Base Rate plus 1¼% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on April 20, 1979, to and including October 20, 1981, and (iii) at the Alternate Base Rate plus 1½% per annum with respect to the instalments of the Conditional Sale Indebtedness payable on April 20, 1982, to and including April 20, 1987.

All payments provided for in this Agreement shall be made in New York Clearing House funds and in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the security interest of the Vendor or result in a lien upon any part of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the interest or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and

paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Railroad shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 6. *Security Interest in the Equipment.* The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment (except, in the case of locomotives, any communications, signal and automatic control equipment or devices having a similar use which have been added to any unit of Equipment by the Railroad the cost of which is not included in the Purchase Price of such unit and which are not required for the operation or use of such unit by the Interstate Commerce Commission, the Department of Transportation or any other applicable regulatory body) and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. *Marking of the Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement Filed under the Interstate Commerce Act, Section 20c", or other appropriate markings approved by the Vendor with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced, obliterated or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as designation that might be interpreted as a claim of ownership; *provided, however,* that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. *Casualty Occurrences.* In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (any such occurrence being hereinafter called a Casualty Occurrence), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed $100,000, the Railroad shall, within 30 days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied on or before the next instalment date for the payment of

Conditional Sale Indebtedness occurring more than 180 days following the date of such payment to the Vendor (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) to replace units suffering a Casualty Occurrence; and, in the event no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of Conditional Sale Indebtedness, as aforesaid. In case any money is applied to prepay indebtedness, it shall be so applied to reduce instalments thereafter falling due *pro rata*.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof (less, in the event that the Railroad shall have made any payment or payments under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to the aggregate of all such payments as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; *provided, however,* that any such waiver shall apply only to the specific amount, if any, of the aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; *provided, further,* that if the Vendor shall be an agent for a group of institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of the institutional investors holding any interest in any of the Conditional Sale Indebtedness then outstanding shall authorize such waiver in writing prior to the date such amount is payable by the Railroad.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered

hereunder and shall be included in the term "Equipment" as used in this Agreement; *provided, however,* that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith, in addition to any settlement documents which may be required pursuant to the fifth paragraph of Article 15 hereof:

(1) a certificate of a Vice President, an Assistant Vice President, or the Controller or Chief Accounting Officer of the Railroad certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) and has been marked as required by the provisions of this Article 8 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service and such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that the Vendor has a valid and perfected security interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 or A-2 by Standard & Poor's Corporation or prime-1 or better by NCO/Moody's Commercial Paper Division of Moody's

Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of or bankers' acceptances accepted by, domestic commercial banks in the United States of America having total assets in excess of $1,000,000,000 or capital and surplus in excess of $100,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations may from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to such portion of the Casualty Value of such Equipment for which payment shall not have been waived by the Vendor as hereinabove provided, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 9. *Maintenance; Compliance with Laws and Rules.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its

own expense; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 120 days from the date of this Agreement, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. *Possession and Use.* The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others 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, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest therein; *provided, however,* that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interest upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent,

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

ARTICLE 13. *Railroad's Indemnities.* The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor or the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. *Patent Indemnities; Builder's Warranty of Material and Workmanship.* Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder 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 Equipment because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Railroad likewise will indemnify, protect and hold harmless the Vendor 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 Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combination, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by

the Railroad to effectuate more fully the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Item 3 of Schedule A hereto.

ARTICLE 15. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant, provided such railroad company shall have capital and surplus aggregating at least that of the Railroad immediately prior to such acquisition.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule A hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sales agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, not subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

In the event that on or prior to the Cut-Off Date this Agreement (a) shall not have been assigned by the Builder to an institutional investor or to an agent acting for a group of institutional investors under a finance agreement providing for deposit with the agent by the institutional investors of any amount equal to the Conditional Sale Indebtedness, by an instrument of assignment providing for payment to the Builder of an amount equal to the Conditional Sale Indebtedness, or (b) shall have been so assigned by the Builder and the assignee shall not make payment to the Builder with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest

charged by any of the four New York City banks having the largest total assets in effect on the date such payment was due.

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

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; 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, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

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

appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. 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 extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other

payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further*, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 railroads have been solicited in writing to submit bids), it shall be subject to the right of the

Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the Vendor the per diem interchange for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the Purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate or rates per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor 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 Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

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

ARTICLE 19. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or 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, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment 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 Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 21. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad, at 908 West Broadway, Louisville, Kentucky 40201,

(b) to the Builder, at its address specified in Item 1 of Schedule A hereto, and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 23. *Law Governing.* The Railroad warrants that its chief place of business and its executive offices are located in the state specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

By_____
Assistant Vice President

[CORPORATE SEAL]
Attest:

_____
Assistant Secretary

THRALL CAR MANUFACTURING COMPANY

By_____
Vice President

[CORPORATE SEAL]
Attest:

_____
Assistant Secretary

COMMONWEALTH OF KENTUCKY
COUNTY OF JEFFERSON } ss.:

On this day of 1976, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President, of LOUISVILLE AND NASHVILLE 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this day of 1976, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires

SCHEDULE A

ITEM 1: THRALL CAR MANUFACTURING COMPANY
P. O. Box 218
Chicago Heights, Illinois 60411

ITEM 2: April 1, 1977

ITEM 3: The Builder warrants that its Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 of the Conditional Sale Agreement to which this Schedule is attached (hereinafter called the Agreement) and warrants its Equipment will be free from defects in material (except as to specialties incorporated therein specified by the Railroad and not manufactured by the Builder) and workmanship and design (except as to designs specified by the Railroad and not developed by the Builder) under normal use and service, the Builder's obligation under this Item 3 being limited to making good at its plant any part or parts of any unit of its Equipment which shall, within one year after the delivery of such unit of Equipment to the Railroad, be returned to the Builder with transportation charges prepaid and which examination by the Builder shall disclose to its satisfaction to have been thus defective. In no event shall the Builder be liable to anyone for any incidental, special or consequential damages of any kind.

The foregoing warranty is expressly in lieu of all other warranties, expressed or implied, including any implied warranty of merchantability or fitness for a particular purpose, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction and delivery of the Equipment except for the patent indemnification included in Article 14 of the Agreement as aforesaid.

The Builder further agrees with the Railroad that neither the inspection provided in Article 3 of the Agreement, nor any examination, nor the acceptance of any units of its Equipment as provided in said Article 3 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 3.

ITEM 4: Alternate Base Rate is the greater of the fluctuating Base Rate of Citibank or ½% of 1% above the latest three-week moving average interest rate payable on 90-119 day dealer-placed commercial paper as published weekly by the Federal Reserve Bank of New York, or if such publications shall be suspended or terminated, such three-week moving average interest rate determined by Citibank on the basis of quotations received by it from three New York commercial paper dealers of recognized standing, in each case adjusted to the nearest (or if none, to the next higher) ¼ of 1%.

SCHEDULE B

Type	AAR Mechanical Designation	Builder's Specifications	Builder's Plant	Quantity	Unit Base Price	Total Base Price	Road Numbers (Inclusive)	Estimated Time and Place of Delivery
100-Ton 52'6" Gondola Cars	GBSR	GN-C-100-52-138-A Revised	Chicago Heights, Illinois	75	$21,968	$1,647,600	26425 through 26499	Prior to October 15, 1976 At Builder's Plant

AGREEMENT AND ASSIGNMENT

Dated as of June 15, 1976

between

THRALL CAR MANUFACTURING COMPANY

and

CITIBANK, N.A.

AGREEMENT AND ASSIGNMENT, dated as of June 15, 1976, between CITIBANK, N.A. (hereinafter called the Assignee), and THRALL CAR MANUFACTURING COMPANY (hereinafter called the Builder).

WHEREAS, the Builder and Louisville and Nashville Railroad Company (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

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

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of Equipment when and as severally delivered to and accepted by the Railroad, and when and as the amount required to be paid for such unit (other than amounts owing under supplemental invoices) is paid to the Builder by the Assignee pursuant to Section 4 hereof and/or by the Railroad pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof and in subparagraph (a) of the third paragraph of Article 4 thereof and the last paragraph of Article 15 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof and remedies pertaining to the foregoing exceptions, which remedies shall not include the security interest of the Builder with respect to units of Equipment subsequent to delivery by the Builder of a bill of sale for such units against payment therefor pursuant to an initial invoice therefor as specified by Section 4 hereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse against the Builder 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 Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its obligations contained or referred to in Article 14 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 19 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of its Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, if any, in any manner imposed upon or accruing against the Assignee or its assigns because of the use in or about the construction or operation of any of its Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to its Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement (other than amounts owing under supplemental invoices as therein provided), whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4)

of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice or supplemental invoice therefor then being settled for which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the Conditional Sale Agreement, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel; *provided, however,* that only the documents specified in subsections (c) and (g)(i) of this Section must be delivered with respect to settlement for a supplemental invoice submitted with respect to Equipment previously settled for:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee all right, title and interest of the Builder in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that such units were free of all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by such Builder under the Conditional Sale Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) an invoice of the Builder for the units of Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(d) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect that (i) the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument, enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) the Assignee has a valid and perfected security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the Conditional Sale

Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Assignment), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Conditional Sale Agreement or this Assignment, or if any such authority is necessary, it has been obtained, (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the Conditional Sale Agreement and this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Railroad, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery by the Assignee, is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment and (v) the bill of sale referred to in subparagraph (a) of this paragraph has been duly authorized, executed and delivered by the Builder and is valid and effective to transfer all right, title and interest of the Builder in and to the units of Equipment in such Group to the Assignee, free from all claims, liens, security interests and other encumbrances of any nature (other than those created by the Conditional Sale Agreement and other than the rights of the Assignee under this Agreement) arising from, through or under the Builder;

(f) an opinion of Messrs. Shearman & Sterling, counsel for the Assignee, dated as of such Closing Date, to the effect that the Conditional Sale Agreement and this Assignment are in substantially acceptable legal form, and the documents furnished at the Closing Date are substantially responsive to the requirements of this Section 4.

(g) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time

and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and is then continuing and (ii) no tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment; and

(h) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to such Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally; in giving the opinion specified in said subparagraphs (d) and (f), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said paragraph (f), counsel may rely as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

(c) agrees that, upon request of the Assignee, its successors and assigns, it will, subsequent to payment by the Assignee to such Builder of the amounts required to be paid under Section 4 hereof, 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 Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, 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.

SECTION 9. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument.

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

THRALL CAR MANUFACTURING COMPANY

By_____
Vice President

[CORPORATE SEAL]

Attest:

_____
~~Assistant Secretary~~
Account Officer

CITIBANK, N.A.

By Melville E. Ingalls Jr
Vice President

[CORPORATE SEAL]

Attest:

_____
~~Assistant Secretary~~
Account Officer

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this day of 1976, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of THRALL CAR MANUFACTURING 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.

Notary Public

[NOTARIAL SEAL]

My Commission expires

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

On this 9th day of September 1976, before me personally appeared Melville E. Ingalls, Jr., to me personally known, who, being by me duly sworn, says that he is a Vice President of CITIBANK, N.A., 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.

Notary Public

STEPHEN A. FOSS
Notary Public, State of New York
No. 24-4605400
Qualified in Kings County
Commission Expires March 30, 1977

[NOTARIAL SEAL]

My Commission expires

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

LOUISVILLE AND NASHVILLE RAILROAD COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of June 15, 1976.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

By_____

Assistant Vice President