

Great Lakes Carbon Corporation



299 PARK AVENUE, NEW YORK, N. Y. 10017

CABLE ADDRESS: PETROCARBO NEW YORK • TELEPHONE 212-935-2400

September 2, 1976 0467

Secretary
Interstate Commerce Commission
Washington, D. C. 20423

RECORDATION NO. Filed & Recorded

SEP 3 1976 - 1 25 PM

~~INTERSTATE COMMERCE COMMISSION~~

Dear Sir:

Herewith for recordation pursuant to Section 20c of the Interstate Commerce Act are eight counterparts of the following:

Conditional Sale Agreement dated as of April 15, 1976, between Greenville Steel Car Company, builder, and Great Lakes Carbon Corporation, and

Agreement and Assignment dated as of April 15, 1976 (in request of the aforesaid Conditional Sale Agreement) between Greenville Steel Car Company, builder, and Mercantile-Safe Deposit and Trust Company, as agent, assignee.

The addresses of the parties to the aforementioned agreements are:

Greenville Steel Car Company
P. O. Box 751
Greenville, Pennsylvania 16125

Great Lakes Carbon Corporation
299 Park Avenue
New York, New York 10017

Mercantile-Safe Deposit and Trust Company
P. O. Box 2258
Baltimore, Maryland 21203

6-251A058

Date SEP 7 1976
Fee \$ 50

ICC Washington, D

FEE OPERATION BR
I.C.C.

SEP 7 1 21 PM '76

RECEIVED

Charles Peterson
Charles Peterson

The equipment covered by the aforementioned agreements consists of 100 100-ton open-top triple hopper cars, AAR mechanical designation HT, bearing the road numbers VTR 2025 through 2055, GLCX 2056 through 2125, and also bearing the legend "This car is Owned by Mercantile-Safe Deposit and Trust Company, as Agent and Owner under a Security Agreement Filed under the Interstate Commerce Act, Section 20c".

Enclosed is our check for \$50 for the required recordation fee. Please accept for recordation two counterparts of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

GREAT LAKES CARBON CORPORATION

A handwritten signature in cursive script that reads "Thomas W. Hayes".

Vice President

Interstate Commerce Commission
Washington, D.C. 20423

9/7/76

OFFICE OF THE SECRETARY

- Thomas W. Hayes
Great Lakes Carbon Corp.
299 Park Ave.
New York, N.Y. 10017
-

Dear Sir:

The enclosed document was recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, 49 U.S.C. 20c, on **9/7/76** at **1:25pm**, and assigned recordation number **8467**

Sincerely yours,


Robert L. Oswald
Secretary

Enclosure

SE-39
(2/75)

RECORDATION NO. 8467 Filed & Recorded
DEC 1 1976 2 25 PM
~~INTERSTATE COMMERCE COMMISSION~~

Conditional Sale Agreement

Dated as of April 15, 1976,

between

GREENVILLE STEEL CAR COMPANY

and

GREAT LAKES CARBON CORPORATION

Agreement and Assignment

Dated as of April 15, 1976,

between

GREENVILLE STEEL CAR COMPANY

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,
as Agent

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT dated as of April 15, 1976 (hereinafter called the Agreement), between GREENVILLE STEEL CAR COMPANY (hereinafter called the Builder or the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and GREAT LAKES CARBON CORPORATION, a Delaware corporation (hereinafter called Great Lakes).

WHEREAS, the Builder has agreed to construct, sell and deliver to Great Lakes, and Great Lakes has agreed to purchase, the equipment described in Schedule A 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. *Certain Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, Greenville Steel Car Company 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, Greenville Steel Car Company and any successor or successors for the time being to its respective manufacturing properties and businesses. The term "person", whenever used in this Agreement, means an individual, a corporation, a partnership, a trust, an unincorporated organization or a government or any agency or political subdivision thereof. The term "Subsidiary" of any designated corporation, whenever used in this Agreement, means any corporation of which such designated corporation or one or more subsidiaries of such designated corporation or such designated corporation and one or more subsidiaries of such designated corporation shall at the time own shares of any class or classes (however designated) having ordinary voting power for the election of at least a majority of the members of the board of directors (or other governing body) of such corporation, other than shares having such power only by reason of the happening of a contingency. Unless otherwise specified, the term "Subsidiary" shall

mean a Subsidiary of Great Lakes. The term "business day", whenever used in this Agreement, means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, are authorized or obligated to be closed. All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder will construct the units of the Equipment and will sell and deliver to Great Lakes, and Great Lakes 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 A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and Great Lakes (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, and each unit of the Equipment will be new railroad equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to Great Lakes at the place or places specified in Schedule A hereto (or if Schedule A does not specify a place or places, at the place or places designated from time to time by Great Lakes), freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Schedule A hereto; *provided, however*, that the Builder shall not have any obligation to deliver any unit of Equipment hereunder if any event of default (as defined 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 the 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 Great Lakes 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, Great Lakes 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 Great Lakes shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as Great Lakes 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 Great Lakes, 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 Great Lakes 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 Great Lakes 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 Great Lakes and are marked in accordance with Article 7 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties set forth in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, Great Lakes 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 A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder and Great Lakes. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

All the Equipment shall be settled for on the Closing Date.

Great Lakes 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 the Closing Date (as hereinafter defined) the amount, if any, by which the Purchase Price of all units of the Equipment for which settlement is then being made, as stated in the invoice presented in respect of the Closing Date (said invoiced price being hereinafter called the Invoiced Purchase Price), exceeds \$2,850,000; and

(b) in 48 quarterly instalments, as hereinafter provided, an amount (herein called the Conditional Sale Indebtedness) equal to the aggregate of the Invoiced Purchase Price of the units of the Equipment for which settlement is then being made less the amount payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the Conditional Sale Indebtedness payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable quarterly on each December 15, March 15, June 15 and September 15 in each year commencing on December 15, 1976, to and including September 15, 1988 (or, if any such date is not a business day, on the next succeeding business day), each such date being sometimes hereinafter called a Payment Date. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from and including the Closing Date on which such indebtedness was incurred at the rate of 10.75% per annum. Such interest shall be payable, to the extent accrued, on each Payment Date. The instalments of principal

payable on each Payment Date shall be calculated on such a basis that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto, and the aggregate of all such payments of principal will discharge the Conditional Sale Indebtedness in full. Promptly following the Closing Date, Great Lakes will furnish to the Vendor a payment schedule showing the amounts of principal and interest payable on each Payment Date.

The term "Closing Date" shall mean such date (on or after May 14, 1976, and prior to October 1, 1976 (hereinafter called the Cut-Off Date)), not more than ten business days following presentation by the Builder to Great Lakes of the invoice and the Certificate or Certificates of Acceptance for the units of the Equipment, as shall be fixed by Great Lakes by written notice delivered to the Vendor at least five business days prior to the Closing Date set forth therein.

Great Lakes will pay, to the extent legally enforceable, interest at the rate of 11.75% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made 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, Great Lakes shall not have the privilege of prepaying any instalment of the Conditional Sale Indebtedness hereunder prior to the date it becomes due.

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

ARTICLE 5. *Taxes.* All payments to be made by Great Lakes 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 Great Lakes assumes and agrees to pay on demand. Great Lakes 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 Great Lakes 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, Great Lakes 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 Great Lakes 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 Great Lakes 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 Great Lakes 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 Great Lakes as provided in this Agreement. Any and all additions to the Equipment 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 Great Lakes' obligations herein contained shall have been performed by Great Lakes, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Great Lakes without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by Great Lakes at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein to Great Lakes, 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 Great Lakes 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 Great Lakes any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. Great Lakes 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 Great Lakes.

ARTICLE 7. *Marking of the Equipment.* Great Lakes will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters

not less than one inch in height, the words "This Car is Owned by Mercantile-Safe Deposit and Trust Company, as Agent and Owner under a Security Agreement Filed under the Interstate Commerce Act, Section 20c", 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. Great Lakes will not place any unit of the Equipment 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. Great Lakes 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 by Great Lakes in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, Great Lakes will not allow the name of any person to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that Great Lakes may cause the Equipment to be lettered with (i) the name or initials or other insignia of Vermont Railway, Inc. in the case of not more than 30 units of Equipment and (ii) the names or initials or other insignia of Great Lakes or its affiliates in the case of all other units of Equipment not otherwise provided for in (i) above.

ARTICLE 8. *Casualty Occurrences; Insurance.* 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 (such occurrences being hereinafter called Casualty Occurrences), Great Lakes shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of any units or 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 \$50,000, Great Lakes, within 30 days thereafter, shall 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

Great Lakes 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 shall, as Great Lakes 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 90 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) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer of Great Lakes) at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, Great Lakes shall deliver to the Vendor a certificate of an officer of Great Lakes that the cost of such equipment does not exceed the fair value thereof. In case any money is applied to prepay indebtedness, it shall be so applied, on the instalment date for the payment of Conditional Sale Indebtedness next following receipt by the Vendor of such written direction, to reduce instalments thereafter falling due in the inverse order of maturity thereof.

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 Great Lakes shall have made any payment under the provisions of subparagraph (a) of the third paragraph of Article 4 hereof, an amount which bears the same ratio to such payment 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.

Great Lakes 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 Great Lakes shall execute, acknowledge, deliver, file, record and 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 Great Lakes shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, Great Lakes shall file therewith:

- (1) a certificate of a Vice President or the Controller or other Chief Accounting Officer of Great Lakes certifying that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) first put into service no earlier than the date of this Agreement 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, the fair value thereof and the original cost thereof and rate of depreciation taken thereon; and

(2) an opinion of counsel for Great Lakes 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 Great Lakes 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 Great Lakes 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 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 commercial banks in the United States of America having a capital and surplus aggregating at least \$100,000,000, in each case maturing not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as Great Lakes 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 Great Lakes. If such proceeds (plus such interest) shall be less than such cost, Great Lakes will promptly pay to the Vendor an amount equal to such deficiency. Great Lakes 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 Great Lakes, after payment by Great Lakes of a sum equal to the Casualty Value of such Equipment, execute and deliver to Great Lakes or Great Lakes' 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 Great Lakes.

Great Lakes will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies, including self-insurance, on similar equipment, and in any event in amounts and against risks comparable to those insured against by Great Lakes on similar equipment owned by it. The proceeds of any insurance in respect of loss, theft, destruction or damage shall be forthwith deposited with the Vendor and applied in the manner described in the second paragraph of this Article 8.

ARTICLE 9. *Maintenance; Compliance with Laws and Rules.* Great Lakes 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, Great Lakes 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, Great

Lakes will conform therewith, at its own expense and within a reasonable time; *provided, however*, that Great Lakes 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.

Great Lakes will bear all risk of, and shall not be released from its obligations, under this Agreement, the Finance Agreement dated as of April 15, 1976, to which this Agreement is an exhibit, or the Agreement and Assignment dated as of April 15, 1976, to which it is a party, in the event of any damage to or the destruction or loss of any unit or of all the Equipment.

ARTICLE 10. *Reports and Inspections.* On or before January 31 in each year, commencing with 1977, Great Lakes shall furnish to the Vendor an accurate statement signed by an officer of Great Lakes (a) setting forth (i) as at the preceding October 31 the amount, description and number of all units of the Equipment that have suffered a Casualty Occurrence during the preceding 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), (ii) the condition and state of repair of the units of Equipment not covered by (i) above and (iii) such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (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 and (c) setting forth the book value of each unit of Equipment. The Vendor shall have the right, by its agents, to inspect the Equipment and Great Lakes' records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 11. *Possession and Use.* Great Lakes, 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

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 Great Lakes, but only upon and subject to all the terms and conditions of this Agreement.

Great Lakes will take all necessary action to protect the Vendor's interest in the Conditional Sale Indebtedness secured by the Equipment, and at no time shall the total book value of the Equipment in use within the national boundaries of Canada amount to more than 30% of the book value of the Equipment subject to this Agreement, and at no time shall the book value of the Equipment in use within the national boundaries of Mexico amount to more than 10% of the book value of the Equipment subject to this Agreement.

ARTICLE 12. *Prohibition Against Liens.* Great Lakes will pay or discharge any and all sums claimed by any party from, through or under Great Lakes 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; *provided, however,* that Great Lakes 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 interests 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. *Great Lakes' Indemnities.* Great Lakes 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 Great Lakes 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, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. 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 Warranties.* Except in cases of articles or materials specified by Great Lakes and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by Great Lakes and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless Great Lakes 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 Great Lakes, 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. Great Lakes 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 Great Lakes and not manufactured by the Builder or of any design, system, process, formula or combination specified by Great Lakes 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 impair-

ing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to Great Lakes 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, combinations, articles or materials specified by Great Lakes 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 Great Lakes or the users of the Equipment all and every such further assurance as may be reasonably requested by Great Lakes more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to Great Lakes of any claim known to the Builder from which liability may be charged against Great Lakes hereunder and Great Lakes will give notice to the Builder of any claim known to Great Lakes 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 warrants that the Equipment will be built in accordance with the Specifications and the standards and requirements set forth in Article 2 hereof and warrants the Equipment will be free from defects in material (except as to specialties incorporated therein specified by Great Lakes and not manufactured by the Builder) and workmanship and design under normal use and service, the Builder's obligation under this paragraph being limited to making good at its plant any part or parts of any unit of the Equipment which shall, within one year or 50,000 miles, whichever occurs first, after the delivery of such unit of Equipment to Great Lakes, 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.

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 of all other obligations or liabilities on the part of the Builder, except for its obligations under

Articles 2, 3, 4 and 14 hereof, and the Builder neither assumes nor authorizes any person to assume for it any other liability in connection with the construction of the Equipment and delivery of the Equipment, except as aforesaid.

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

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by or in connection with this Agreement or the Finance Agreement dated as of April 15, 1976 (hereinafter called the Finance Agreement), among Great Lakes, Mercantile-Safe Deposit and Trust Company and the Equitable Life Assurance Society of the United States, directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it or Great Lakes is a party in interest, all within the meaning of the Employment Retirement Income Security Act of 1974.

ARTICLE 15. *Assignments.* Great Lakes 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 corporation organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the property of Great Lakes, 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 Great Lakes under this Agreement, shall not be deemed a breach of this covenant, provided such corporation shall have stockholders' equity at least equal to that of Great Lakes 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 Great Lakes, 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 Great Lakes of any of its obligations to the Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, 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 Great Lakes, together with a counterpart or copy of such assignment, 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 Great Lakes of the notification of any such assignment, all payments thereafter to be made by Great Lakes under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

Great Lakes recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. Great Lakes expressly represents, for the purpose of assurance to any person 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, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to Great Lakes by the

Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by Great Lakes against and only against the Builder.

Great Lakes will (a) in connection with the settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date fixed in the notice by Great Lakes, 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.

If this Agreement shall have been assigned by the Builder and if the assignee shall not make payment to the Builder with respect to units of the Equipment as provided in the instrument making such assignment, the Builder will promptly notify Great Lakes of such event and, if such amount shall not have been previously paid by such assignee, Great Lakes will, not later than 60 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of the Equipment, together with interest from the day such payment was due to the date of payment by Great Lakes 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:

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

(b) Great Lakes 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) Great Lakes or any Subsidiary shall

(1) admit in writing its inability to pay its debts generally as they become due,

(2) file or consent to the filing against it of a petition in bankruptcy or a petition to take advantage of any insolvency act,

(3) make or suffer any unauthorized assignment or transfer of the right to possession of any units of the Equipment,

(4) consent to the appointment of a receiver, liquidator, sequestrator or any other officer with similar powers of itself or of the whole or any substantial part of its property,

(5) dissolve, liquidate or wind up or take corporate action for the purpose of any thereof other than as permitted by Article 15,

(6) be adjudicated a bankrupt or insolvent, or

(7) file a petition or answer seeking reorganization or arrangement under any applicable law or statute of any jurisdiction ; or

(d) if a court of competent jurisdiction shall enter an order, judgment or decree appointing, without the consent of Great Lakes or a Subsidiary, a receiver, liquidator, sequestrator or any other officer with similar powers of Great Lakes or such Subsidiary or of the whole or any substantial part of its property, or approving a petition filed against it seeking reorganization or arrangement under any applicable law or statute of any jurisdiction, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry thereof ; or

(e) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of Great Lakes or a Subsidiary, or of the whole or any substantial part of its property, and such custody or control shall not be terminated or stayed within 60 days from the date of assumption of such custody or control ; or

(f) if final judgment for the payment of money in excess of \$50,000 shall be rendered by a court of record against Great Lakes or a Subsidiary and Great Lakes or such Subsidiary, as the case may be, shall not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 60 days from the date of entry thereof and within said period of 60 days, or such longer period during which execution of such judgment shall have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal ; or

(g) if any material representation or warranty made by Great Lakes herein or in any certificate or other instrument delivered under or pursuant to any provision hereof or of the Finance Agreement shall prove to have been false or incorrect or breached in any material respect on the date as of which made; or

(h) Great Lakes shall fail to make any payment on indebtedness for borrowed money when due or an event of default under any mortgage, indenture of trust or other agreement evidencing the indebtedness of Great Lakes for borrowed money shall have occurred and be continuing;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to Great Lakes 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 Great Lakes wherever situated. Great Lakes 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 Great Lakes 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 Great Lakes 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, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to Great Lakes 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 Great Lakes or any other person and for such purpose may enter upon Great Lakes' 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 Great Lakes.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement, Great Lakes 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 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 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 Great Lakes or such other lines or premises as the Vendor may designate for a period of time not to exceed 120 days until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose Great Lakes agrees to furnish or to make arrangements for, without charge to the Vendor for rent or storage, the necessary facilities at any point or

points selected by the Vendor and, at Great Lakes' 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 Great Lakes requiring specific performance hereof. Great Lakes 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 Great Lakes 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 Great Lakes' rights in the Equipment shall thereupon terminate and all payments made by Great Lakes may be retained by the Vendor as compensation for the use of the Equipment by Great Lakes; *provided, however*, that if Great Lakes, 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 Great Lakes; *provided, further*, that if Great Lakes or

any other person notified under the terms of this paragraph objects in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 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 Great Lakes 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 Great Lakes or any other party claiming from, through or under Great Lakes, 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, Great Lakes 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 Great Lakes. 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 Great Lakes

may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. Great Lakes shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to Great Lakes 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 20 railroads have been solicited in writing to submit bids), it shall be subject to the right of Great Lakes 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 Great Lakes (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 Great Lakes hereunder. From and after the date of any such sale, Great Lakes 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 Great Lakes shall not otherwise alter or affect the Vendor's rights or Great Lakes' obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect Great Lakes' 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, Great Lakes 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 Great Lakes at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If Great Lakes shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against Great Lakes. 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 Great Lakes.

Great Lakes 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.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State Laws.* Any provision of this Agreement prohibited by an 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 Great Lakes 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, Great Lakes, 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.* Great Lakes 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 or any successor agency in accordance with Section 20c of the Interstate Commerce Act; and Great Lakes 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 Great Lakes 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.* Great Lakes will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and any assignment of this Agreement (including the fees and expenses of an Agent, if the assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for any assignee of this Agreement and for any party acquiring interests in such assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such 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 the following specified addresses:

- (a) to Great Lakes, at 299 Park Avenue, New York, N.Y. 10017;

(b) to the builder, at P. O. Box 571, Greenville, Pennsylvania 16125; and

(c) to any assignee of the Vendor or of Great Lakes, 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 exclusively states the rights of the Vendor and Great Lakes 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 Great Lakes.

ARTICLE 23. *Law Governing.* Great Lakes warrants that its chief place of business and its chief 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 such state; *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 have caused this instrument to be duly executed all as of the date first above written.

[Corporate Seal]

Attest:

Shawn H. Keagy
Assistant Secretary

GREAT LAKES CARBON CORPORATION,

By Thomas W. Hayes
Vice President

[Corporate Seal]

Attest:

R. Keith
Assistant Secretary

GREENVILLE STEEL CAR COMPANY,

By R. Keith
Vice President

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

On this *1st* day of September 1976, before me personally appeared *Thomas R. Hagen*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREAT LAKES CARBON CORPORATION, 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 Brown

Notary Public

TERESA BROWN

Notary Public, State of New York

No. 31-5486185

Qualified in New York County

Commission Expires March 30, 1978

[Notarial Seal]

My commission expires

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF MERCER, } SS.:

On this *1st* day of September 1976, before me personally appeared *F. B. Logan*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR 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.

Leora Smith

Notary Public

[Notarial Seal]

My commission expires **LEORA SMITH, Notary Public**
GREENVILLE, MERCER COUNTY
My Commission Expires Feb. 21, 1977.

SCHEDULE A

<u>Builder</u>	<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Builder's Specifications</u>	<u>Builder's Plant</u>	<u>Quantity</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Road Numbers (Inclusive)</u>	<u>Estimated Time and Place of Delivery</u>
Greenville Steel Car Company	100-Ton Open-Top Triple Hopper Cars	HT	H-3062 dated October 10, 1975	Greenville, Pennsylvania 16125	100	\$28,500	\$2,850,000	VTR 2026-55 GLCX 2056-2125	September 1976, Greenville, Pennsylvania

SCHEDULE I

Payment Date	Principal	Interest	Payment (Principal + Interest)
1	\$ 29,786.28	\$ 76,593.75	\$ 106,380.03
2	30,586.78	75,793.25	106,380.03
3	31,408.80	74,971.23	106,380.03
4	32,252.92	74,127.11	106,380.03
5	33,119.71	73,260.32	106,380.03
6	34,009.80	72,370.23	106,380.03
7	34,923.82	71,456.21	106,380.03
8	35,862.39	70,517.64	106,380.03
9	36,826.20	69,553.83	106,380.03
10	37,815.90	68,564.13	106,380.03
11	38,832.20	67,547.83	106,380.03
12	39,875.82	66,504.21	106,380.03
13	40,947.48	65,432.55	106,380.03
14	42,047.94	64,332.09	106,380.03
15	43,177.99	63,202.04	106,380.03
16	44,338.39	62,041.64	106,380.03
17	45,529.98	60,850.05	106,380.03
18	46,753.61	59,626.42	106,380.03
19	48,010.10	58,369.93	106,380.03
20	49,300.38	57,079.65	106,380.03
21	50,625.33	55,754.70	106,380.03
22	51,985.88	54,394.15	106,380.03
23	53,383.00	52,997.03	106,380.03
24	54,817.67	51,562.36	106,380.03
25	56,290.90	50,089.13	106,380.03
26	57,803.71	48,576.32	106,380.03
27	59,357.19	47,022.84	106,380.03
28	60,952.41	45,427.62	106,380.03
29	62,590.51	43,789.52	106,380.03
30	64,272.63	42,107.40	106,380.03
31	65,999.95	40,380.08	106,380.03
32	67,773.70	38,606.33	106,380.03
33	69,595.13	36,784.90	106,380.03
34	71,465.49	34,914.54	106,380.03
35	73,386.12	32,993.91	106,380.03
36	75,358.38	31,021.65	106,380.03
37	77,383.64	28,996.39	106,380.03
38	79,463.32	26,916.71	106,380.03
39	81,598.89	24,781.14	106,380.03
40	83,791.87	22,588.16	106,380.03
41	86,043.77	20,336.26	106,380.03
42	88,356.20	18,023.83	106,380.03
43	90,730.78	15,649.25	106,380.03
44	93,169.16	13,210.87	106,380.03
45	95,673.08	10,706.95	106,380.03
46	98,244.30	8,135.73	106,380.03
47	100,884.61	5,495.42	106,380.03
48	103,595.89	2,784.14	106,380.03
	\$2,850,000.00	\$2,256,241.44	\$5,106,241.44

Agreement and Assignment

Dated as of April 15, 1976,

between

GREENVILLE STEEL CAR COMPANY

and

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY,

as Agent

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT, dated as of April 15, 1976, between **MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY**, acting as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement) (said Agent, so acting, being hereinafter called the Assignee), and **GREENVILLE STEEL CAR COMPANY** (hereinafter called the Builder).

WHEREAS, the Builder and Great Lakes Carbon Corporation (hereinafter called Great Lakes), 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 Great Lakes of the railroad equipment described in Schedule A 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 Great Lakes, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(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 in and to any and all amounts which may be or become due or owing by Great Lakes to the Builder under the Conditional Sale Agreement in respect of the Purchase Price (as defined in the Conditional Sale Agree-

ment) of the Equipment and interest thereon, and in and to any other sums becoming due from Great Lakes 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 Great Lakes 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 Great Lakes 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 Great Lakes with respect to the Equipment shall be and remain enforceable by Great Lakes, 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 Great Lakes 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 Great Lakes in accordance with the provisions of the Conditional Sale Agreement; and that, notwith-

standing 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 Great Lakes 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 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 Great Lakes thereunder. The Builder will not deliver any of the Equipment to Great Lakes 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 Great Lakes or 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 the 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 Great Lakes 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 Great Lakes 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 Great Lakes 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 Great Lakes and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by Great Lakes 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, 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 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 Assignee will give notice to the Builder of any claim actually known to the Assignee from which liability may be charged against the Builder hereunder and will give to 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 Great Lakes with respect to the Equipment, with the exception of amounts payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement, 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.

The provisions of this Section 3 shall continue in full force and effect notwithstanding the full payment of all sums due under this Assignment or the satisfaction, discharge or termination of this Assignment in any manner whatsoever.

SECTION 4. The Assignee, on the Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment, as shown on the invoice therefor, 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 the Conditional Sale Agreement) 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:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee the security title of the Builder in the units of the Equipment warranting to the Assignee and to Great Lakes 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 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 the Builder under the Conditional Sale Agreement;

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

(c) an invoice of the Builder for the units of Equipment, accompanied by or having endorsed thereon a certification by Great Lakes as to the correctness of the prices stated therein;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investor named in the Finance Agreement, dated as of such Closing Date, to the effect that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investor, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by Great Lakes 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 enforceable in accordance with its terms, (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 and such units, at the time of delivery thereof to Great Lakes 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), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, or if 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, this Assignment or any certificate of interest delivered pursuant to the Finance Agreement 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 or such Investor;

(e) an opinion of counsel for Great Lakes, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iv), (v), (vi), (vii) and (viii) of subparagraph (d) above (said counsel, in rendering such opinion, being permitted to assume due authorization, execution and delivery of the Finance Agreement and the Conditional Sale Agreement by parties thereto other than Great Lakes) and stating that Great Lakes 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;

(f) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating 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 is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized,

executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms;

(g) a certificate of an officer of Great Lakes, 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, (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, (iii) all representations and warranties in Paragraph 8 of the Finance Agreement are true on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date, (iv) Great Lakes has performed all agreements on its part required to be performed under the Finance Agreement and the Conditional Sale Agreement on or prior to the Closing Date, and (v) Great Lakes has not consolidated with, merged into, or sold, leased or otherwise disposed of its properties as an entirety or substantially as an entirety to, any person (whether or not the same would have been permitted by Article 15 of the Conditional Sale Agreement).

(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 the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by Great Lakes.

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 similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraphs (d) and (e), 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 and the absence of liens on the Equipment at the time of delivery thereof under the Conditional Sale Agreement; in giving the opinion specified in said subparagraph (d), 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 Great Lakes as to such matter and in giving the opinion specified in said subparagraph (f), counsel may rely as to any matter governed by the law of any jurisdiction other than Pennsylvania and the United States on the opinion of counsel for Great Lakes as to such matter.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time 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 the units 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 Great Lakes 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 Great Lakes, the Conditional Sale Agreement is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and Great Lakes 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 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 Commonwealth of Pennsylvania; *provided, however*, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the Conditional Sale Agreement.

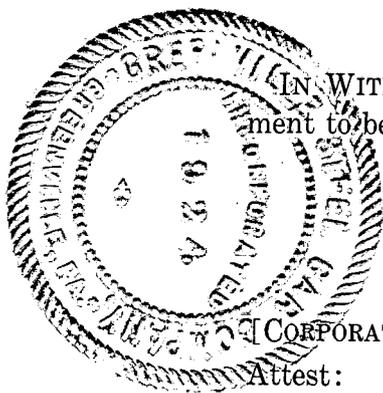
SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to Great Lakes, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution 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 have caused this instrument to be duly executed all as of the date first above written.

GREENVILLE STEEL CAR COMPANY,

By *H. B. Dwyer*
Vice President



[CORPORATE SEAL]

Attest:

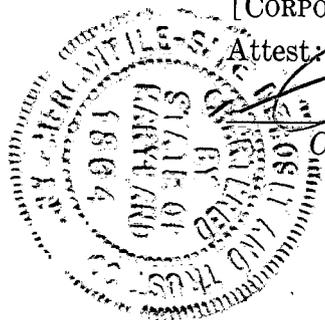
L. O. Hubert
Assistant Secretary

MERCANTILE-SAFE DEPOSIT AND TRUST COMPANY, as Agent,

By *J. J. Gandy*
Assistant Vice President

[CORPORATE SEAL]

Attest:



[Signature]
Corporate Trust Officer

COMMONWEALTH OF PENNSYLVANIA, }
COUNTY OF MERCER, } SS.:

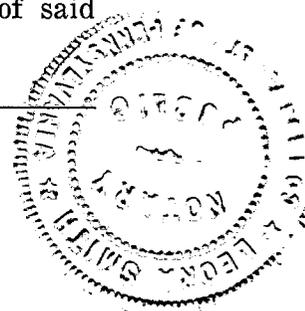
On this *1st* day of September 1976, before me personally appeared *F. B. Logan*, to me personally known, who, being by me duly sworn, says that he is a Vice President of GREENVILLE STEEL CAR COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

Leora Smith

Notary Public

LEORA SMITH, Notary Public
GREENVILLE, MERCER COUNTY
My Commission Expires Feb. 21, 1977

[NOTARIAL SEAL]
My commission expires



STATE OF NEW YORK, }
COUNTY OF NEW YORK, } SS.:

On this *2nd* day of September 1976, before me personally appeared *G. J. Johnston*, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of MERCANTILE-SAFE DEPOSIT AND TRUST 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.

Karen Walters Mullen

Notary Public

KAREN WALTERS MULLEN
Notary Public, State of New York
No. 30-9523715
Qualified in Nassau County
Certificate filed in New York County
Commission Expires March 30, 1978

[NOTARIAL SEAL]
My commission expires



ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

GREAT LAKES CARBON CORPORATION hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of April 15, 1976.

GREAT LAKES CARBON CORPORATION,

By Thomas W. Hayes
Vice President

