

# SOUTHWESTERN STATES MANAGEMENT CO.

701 COMMERCE STREET  
DALLAS, TEXAS 75202  
(214) 651-6731

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Vice President (St. Louis)  
K. R. LANGFORD  
Comptroller (Denison)  
R. E. McCORMICK  
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Assistant Secretary

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President  
KARL R. ZIEBARTH  
Vice President,  
Secretary and Treasurer  
H. O. BRANDT  
Vice President and  
General Manager  
W. A. THIE  
Vice President and  
General Counsel

October 15, 1980

12320 A  
RECORDATION NO. \_\_\_\_\_ Filed 1425

OCT 17 1980 -3 20 PM 410.043-65A

INTERSTATE COMMERCE COMMISSION

Mrs. Agatha L. Mergenovich  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Re: Conditional Sale Agreement and Agreement and Assignment dated as of September 24, 1980, between Trinity Industries, Inc., and Southwestern States Management Co., assigned to First City Bank of Dallas, covering purchase of 100 100-ton covered triple hopper cars

Dear Mrs. Mergenovich:

In accordance with the provisions of Section 11303 of the Interstate Commerce Act and rules and regulations approved and prescribed by the Interstate Commerce Commission pursuant thereto, there are submitted for filing and recording six executed counterparts of the Conditional Sale Agreement dated as of September 24, 1980, between Trinity Industries, Inc. as Manufacturer and Seller, Dallas, TX 75207, and Southwestern States Management Co., Purchaser, designated as "Company" therein, 701 Commerce Street, Dallas, TX 75202, which Conditional Sale Agreement was assigned by Agreement and Assignment of even date by Manufacturer to First City Bank of Dallas, One Main Place, P. O. Box 50688, Dallas, TX 75250, counterparts of same enclosed herewith, said Conditional Sale Agreement covering the purchase by the Company of one hundred (100) 100-ton covered triple hopper cars, said cars to bear recording marks and numbers of the Missouri-Kansas-Texas Railroad Company: MKT 4300 - 4399 both inclusive.

Please return to me the file-marked copies of the Conditional Sale Agreement and Agreement and Assignment for distribution to the parties. I am enclosing a cashier's check in the amount of \$50 to cover the prescribed fee for recording these instruments.

I certify that I have knowledge of the matters set forth herein.

Yours very truly,

*Arthur M. Albin*  
Arthur M. Albin  
General Attorney

da  
Enc.

cc: Dewain Hill, First City Bank  
R. A. Martin, Trinity Industries, Inc.  
K. R. Ziebarth

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RECORDATION NO. .... Filed 1426

OCT 17 1980 -3 20 PM

INTERSTATE COMMERCE COMMISSION

TRINITY INDUSTRIES, INC.

and

SOUTHWESTERN STATES MANAGEMENT CO.

CONDITIONAL SALE AGREEMENT

Dated as of September 24, 1980

FOR 100 COVERED TRIPLE HOPPER CARS

AGREEMENT AND ASSIGNMENT

between

TRINITY INDUSTRIES, INC.

FIRST CITY BANK OF DALLAS

and

SOUTHWESTERN STATES MANAGEMENT CO.

Dated as of September 24, 1980

THIS AGREEMENT, dated as of September 24, 1980, by and between Trinity Industries, Inc., a Texas corporation, with an office in Dallas, Texas, (hereinafter called "Manufacturer"), and Southwestern States Management Co., a Missouri corporation, with an office in Dallas, Texas, (hereinafter called "Company").

W I T N E S S E T H:

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

1. CONSTRUCTION AND SALE. The Manufacturer will construct, sell and deliver to the Company and the Company will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth railroad equipment (any one of which, is hereinafter referred to as "Car" and more than one or all of which are hereinafter referred to as "Cars" both of which terms include all related accessories, accessions, parts, tools, and equipment furnished by the Manufacturer) as follows:

One hundred (100) 100-ton, 4750 cu. ft. covered triple hopper cars with through center sill constructed by Manufacturer in accordance with its general specification HC3-47-1 dated October 1, 1979, as revised July 11, 1980, said Cars to bear recording marks and numbers of the Missouri-Kansas-Texas Railroad Company: MKT 4300 - 4399 both inclusive.

2. DELIVERY. The Manufacturer will deliver the Cars to the Company free on tracks at not later than November 15, 1980. Any Cars not delivered and accepted on or before that date shall be excluded herefrom; provided however, in the event Manufacturer is unable to deliver all one hundred Cars by said date due to delays resulting from causes beyond the Manufacturer's control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes or other labor conditions, accidents, fire, flood,

explosions, damage to plant, equipment or facilities, delays or defaults of subcontractors, failure to receive necessary materials or supplies or usual means of transportation, said delivery date shall be extended for the period of such delay until December 15, 1980, and any Cars not delivered and accepted by such final date shall be excluded herefrom.

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

If any Cars shall be excluded from this Agreement pursuant to the first paragraph of this Section 2, the Manufacturer and the Company shall execute an Agreement supplemental hereto limiting this Agreement to the Cars not so excluded therefrom.

The Company shall accept the Cars upon delivery to it at Fort Worth, Texas. Each of the Cars prior to shipment shall be inspected by an authorized representative of the Company at Manufacturer's plant. If such Cars conform to specifications, such representative of the Company shall execute a certificate of inspection (hereinafter called the "Certificate of Inspection and Acceptance") stating that such Cars have been inspected by him on behalf of the Company as conforming in all respects to the requirements and provisions of this Agreement, and such Cars are marked in accordance with Article 5 hereof. Such Certificate of Inspection and Acceptance shall constitute conclusive evidence that the Cars conform to specifications and are acceptable to the Company in all details. The Certificate of Inspection and Acceptance shall be delivered to the Manufacturer at the time of the delivery of the Cars to the Company immediately following the representative's inspection thereof. Any number of said Cars may be included in any such Certificate of Inspection and Acceptance.

3. PURCHASE PRICE AND PAYMENT. The purchase price of all Cars shall be Four Million Three Hundred Thousand (\$4,300,000) Dollars. Conditional only upon the receipt and acceptance of all of the Cars which shall be conclusively presumed from the execution of the Certificates of Inspection and Acceptance, the Company hereby promises to pay to the Manufacturer at its office in Dallas, Texas, or such other office within the United States of America as the Manufacturer may designate, the aforesaid price of the Cars as follows:

(a) That portion of the actual full purchase price of all said Cars in excess of the sum of \$3,780,000 shall be paid by Company to Manufacturer upon receipt of invoice therefor.

(b) \$3,780,000 of the actual full purchase price of said Cars (being the deferred purchase price thereof) shall be paid by Company in 108 consecutive monthly installments, each of which said installments shall be in the principal amount of \$35,000 the first installment to be due and payable on November 15, 1980, and each subsequent installment on the same day of the month of each calendar month thereafter, with the last installment being due and payable on October 15, 1989, together with interest, from each closing date as defined in Article 6 of that certain Agreement and Assignment of even date herewith between Manufacturer, Company and First City Bank of Dallas, on the amount of the balance remaining unpaid from time to time at a rate per annum equal to the lesser of the highest lawful rate or one hundred fifteen (115%) percent times the prime interest rate of First City Bank of Dallas as in effect from day to day, each change in the rate of interest payable hereunder to become effective, without notice to the Company, on the effective date of each change in such prime rate.

If certain of the Cars are excluded from this agreement pursuant to Article 2 hereof, then (i) the purchase price for the Cars actually delivered

and accepted hereunder shall be \$43,000 per Car, (ii) the initial cash payment for each such Car under (a) above shall be \$5,200, (iii) the deferred payment for each such Car under (b) above shall be \$37,800, and (iv) the monthly installments of principal described in (b) above shall be reduced to the product of \$3,500 times the number of Cars actually delivered and accepted hereunder.

The Company will pay on demand, to the extent legally enforceable, interest at the rate of eighteen (18%) percent per annum upon all such amounts, principal and interest, remaining unpaid after the same become due and payable pursuant to the terms hereof.

All payments provided for in this agreement will be made by the Company in such coin or currency of the United States of America as at the time of payment is legal tender for the payment of public and private debts.

The price of said Cars is subject to such increase or decrease as may be agreed to by the Manufacturer and the Company; provided that the deferred payment per Car under (b) above may never exceed \$37,800 which must, in turn, be 90 percent or less of the full purchase price of such Car.

The Company shall have the right to prepay all or any part of the unpaid balance due on all of the Cars delivered hereunder at any time after the date hereof with interest at the rate specified in (b) above to the date of such payment upon thirty days' written notice to the Manufacturer or its assignee.

The obligations of the Company to pay the purchase price for the Cars hereunder, together with interest provided for herein, shall be governed exclusively by the terms of this Conditional Sale Agreement, and such obligations to pay shall not be evidenced by notes, securities, or other evidence of indebtedness.

4. TAXES. All payments to be made by the Company hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than Federal and State income and excess profits taxes) or licenses hereafter levied or imposed directly upon, or measured by, this agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Company assumes and agrees to pay in addition to the purchase price of the Cars. The Company will also pay promptly all taxes and assessments which may be imposed upon the Cars or for the use thereof or upon the earnings arising therefrom or the operation thereof or upon the Manufacturer by reason of its ownership thereof by any jurisdiction in which the Cars are operated by the Company and will keep at all times all and every part of the Cars free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer. The Manufacturer shall be entitled, but not obligated, to pay any such expenses or taxes, if delinquent, in which event the Company shall reimburse the Manufacturer, on presentation of invoice, for all amounts expended by the Manufacturer, together with interest thereon at the highest lawful rate per annum from the date expended until repaid, and any sums of money so paid by Manufacturer shall be secured by and under this contract.

5. TITLE TO THE CARS. The Manufacturer shall and hereby does retain the full legal title to and property in the Cars until the Company shall have made all of the payments and shall have kept and performed all of the covenants in this agreement provided to be made, kept or performed by the Company, notwithstanding the delivery of the Cars to and the possession and use thereof by the Company as herein provided. Any and all replacements of the Cars and of parts thereof or of any replacements thereof and additions thereto shall

constitute accessions to the Cars and be subject to all the terms and conditions of this agreement and included in the term "Cars" as used in this agreement.

The Company, so long as it shall not be in default under this agreement, shall be entitled to the possession and use of the Cars as herein provided, subject to the terms and conditions herein contained. Notwithstanding anything to the contrary herein, Company is hereby permitted to lease the Cars to the Missouri-Kansas-Texas Railroad Company, a Delaware corporation, (hereinafter called "Railroad") for term of 108 consecutive months and to stencil said Cars "Southwestern States Management Co., Lessor". Said lease however may provide for termination of same concurrently with the payment of all indebtedness due and owing hereunder, including principal and interest, by Company to Manufacturer and its assignee.

The Company will cause each Car to be kept numbered with the aforesaid identifying marks and numbers and will keep and maintain, plainly, distinctly, permanently and conspicuously stenciled on each side of the Cars the name of the Manufacturer or of the Manufacturer's assignee, as the case may be, in letters of not less than one inch in height followed by the word "Owner."

The Company will not place any of the Cars in operation or exercise any control or dominion over any part thereof until the Cars have been so marked on both sides of each Car. The Company will not change nor permit the change of the numbers of the Cars without first notifying the Manufacturer in writing.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on the Cars or any replacements thereof as a designation that might be interpreted as a claim of ownership; provided, however, that the Company or Railroad may cause the Cars to be lettered with appropriate words or marks for convenience of identification of the Company's or Railroad's interest therein.

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

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

6. REPLACEMENT. In the event of loss or destruction of or irreparable damage to any of the Cars from any cause whatsoever until the total purchase price herein provided shall have been fully paid by the Company, the Company shall promptly and fully inform the Manufacturer in regard to such loss or destruction. The Company shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance of the purchase price applicable to such Car or Cars or shall replace each such Car at its own cost with a Car of similar type and of substantially as good material and construction as that lost or destroyed and having a cost or fair value (whichever is less)

at least equal to the fair value of the Car replaced at the time of replacement. The Company will cause any such Car to be marked as provided in Article 5 hereof and to be numbered with the same number as the Car so replaced. Any and all such replacements of Cars or any of them and all and any parts shall constitute accessions to the Cars and shall be subject to all of the terms and conditions of this agreement as though part of the original Cars delivered hereunder and included in the word "Cars" as used in this agreement. Title to all such replacement Cars shall be free and clear of all liens and encumbrances and shall be taken initially and shall remain in the name of the Manufacturer (or, if this agreement shall have been assigned, in the name of the assignee or assignees, as the case may be), subject to the provisions hereof. Following payment to the Manufacturer, its Assignee shall be entitled to the same benefits and provisions of this Article 6.

7. INSURANCE.

(a) The Company will at all times and at its own expense keep the Cars insured (with loss payable to the Manufacturer or its assignee and the Company as their interests may appear and containing a standard mortgage clause) in a company or companies approved by the Manufacturer against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion in sums and by policies adequate at all times to protect the interests of the Manufacturer and the Company; provided that the contract for such insurance may provide insurance with loss deductible in an amount not exceeding \$150,000 for any one loss, or if such deductible becomes unobtainable, in such amount nearest \$150,000 as shall be reasonably obtainable, in which event Company shall duly notify Manufacturer of such new deductible. Any moneys paid under any such insurance policy shall be applied to the then unpaid balance of the purchase price

applicable to the Cars with respect to which the moneys are so paid or shall be applied toward the replacement or repair of such Cars, at Company's election. In the event that the moneys are to be applied to such replacement or repair, they shall be retained by the Manufacturer until replacement or repair of the Car or Cars lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Company is not then in default in any of the obligations hereunder, the Manufacturer shall pay over such money to the Company. Any moneys receivable by or payable to the Company from any company or other person or corporation because of loss or destruction or damage to any such Car or Cars shall be paid over to the Manufacturer to be held and applied by it as aforesaid.

(b) The Company will at all times and at its own expense maintain or cause to be maintained general public liability insurance, with insurers through Lloyds of London (or such other company or companies approved by the Manufacturer) against claims for bodily injury, death, or property damage occurring as a result of the ownership, use, or operation of the Cars, in the minimum amounts of \$10,000,000 for bodily injury or death to any one person, of \$20,000,000 for any one accident, and \$4,000,000 for property damage; provided that the policy or policies for such insurance may provide for a loss deductible in an amount not exceeding \$1,000,000 net loss per occurrence. In the event such a deductible becomes unobtainable or unreasonably costly, Company will obtain as low a deductible as reasonably available, but no greater a deductible than is customary for Class I railroads.

(c) If the Company shall fail or refuse to observe its agreements with respect to the insurance under (a) or (b) hereof, then, in addition to and without limiting its other remedies hereunder, the Manufacturer shall be entitled, but not obligated, to purchase such insurance, in which event the

Company shall reimburse the Manufacturer, on presentation of an invoice, for all amounts expended by the Manufacturer, together with interest thereon at the highest lawful rate per annum from the date expended until repaid; and any sums of money paid by the Manufacturer shall be secured by and under this contract.

8. MAINTENANCE AND REPAIR. The Company will at all times maintain the Cars in good order and repair at its own expense. In the event the Manufacturer or its assignee receives any bill or invoice for maintenance or repairs made by other railroads or any other third party which may be presented to it as the owner of the Cars, such bill or invoice shall be submitted to the Company and Company shall promptly pay same to the appropriate party. The Manufacturer shall be entitled, but not obligated, to pay any such bills or invoices for repairs or maintenance, if the Company fails or refuses to pay same within a reasonable period of time, in which event the Company shall reimburse the Manufacturer or its assignee, upon presentation of invoice for all such amounts expended by the Manufacturer or its assignee, together with interest thereon at the highest lawful rate per annum from the date expended until repaid; and any sums of money so paid by the Manufacturer or its assignee shall be secured by and under this contract.

9. MANUFACTURER'S WARRANTY OF MATERIAL AND WORKMANSHIP. Manufacturer warrants to the Company that said Cars are of the kind and quality described in the specification referred to herein and warrants that when delivered, the Cars will be built in accordance with the specifications and (except as to any items which are not manufactured by Manufacturer) will be free from defects in material and workmanship under normal use and service. Manufacturer's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such Cars which shall, within one (1) year or 25,000

miles, whichever occurs first, after Manufacturer shall have made delivery of such defective Cars, be returned to the place of manufacture of said Cars with transportation charges prepaid.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS AND LIABILITIES ON THE PART OF MANUFACTURER. Manufacturer shall not be liable for any indirect, special or consequential damages resulting from any defects in material or workmanship.

10. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Until the total purchase price herein provided for and all other sums of money payable by the Company hereunder shall have been fully paid by the Company, the Company will comply in all respects with all laws of the United States and of the States and Territories in which its operations involving the Cars may extend, and with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Cars, and with all of the rules, interpretations or directives of the Association of American Railroads (AAR), including but not limited to the Field Manual of the AAR, the AAR Code of Car-Hire Rules and Interpretations -- Freight, the AAR Car Service and Car-Hire Agreement and the AAR Code of Car Service Rules and Interpretations -- Freight. In the event that said laws or rules require the alteration of the Cars, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules until the total purchase price herein provided shall have been fully paid by the Company; provided, however, that the Company may, in good faith, contest in any reasonable manner the application of

any such law or rule which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Cars.

11. REPORTS AND INSPECTIONS. The Company will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price herein provided shall have been fully paid by the Company, an accurate inventory of the Cars in actual service, the numbers and description of such Cars as may have been destroyed and replaced by others, and the then condition and state of repair of the Cars. The Company will additionally furnish to the Manufacturer a certificate of insurance in form and substance satisfactory to Manufacturer. The Company will also furnish such other information regarding the Cars as may be reasonably requested. In addition thereto, the Company will furnish to the Manufacturer's assignee, if requested, once in each year, until the total purchase price herein provided shall have been fully paid by the Company, a report of inspection by an authorized representative of the Company, or, if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that said Cars have been maintained and are in good order and repair.

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

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

12. POSSESSION AND USE. The Company, so long as it shall not be in default under this agreement, shall be entitled to the possession of the Cars and the use thereof upon the lines of railroad owned or operated by Railroad, either alone or jointly with another, and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, and the Cars may be used also upon connecting and other railroads and car ferries in the customary manner and in the usual interchange of traffic, from and after delivery of the Cars by the Manufacturer to the Company or Railroad, but only upon and subject to all the terms and conditions of this agreement.

13. PROHIBITION AGAINST LIENS. The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or Railroad and their successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Cars, or any of them superior to the title of the Manufacturer therein, but shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith by appropriate legal proceedings in any reasonable manner which will not affect the title of the Manufacturer in and to the Cars. The Company shall notify the Manufacturer of any contest it makes of any such charges, and, in the event the Manufacturer deems that its rights in the Cars may be jeopardized by such contest, the Company will, on the Manufacturer's demand, pay such contested charges with such reservation as may be appropriate. The Manufacturer shall be entitled, but not obligated, to pay any sums necessary to discharge any such liens or encumbrances against the Cars, together with interest on such sums at the highest lawful rate per annum from the date expended by the Manufacturer until repaid, and in such event any such sums paid by the Manu-

facturer in discharge of liens or encumbrances on said Cars shall be reimbursed by Company to the Manufacturer upon demand and shall be secured by and under this contract.

14. COMPANY'S INDEMNITIES AND GUARANTEES. The Company will save, indemnify and keep harmless the Manufacturer from and against, and defend the Manufacturer against, all losses, damages, injuries, claims, demands and costs (including court costs and attorneys' fees) whatsoever arising on the account of the Cars or the use or operation thereof, except for any and all losses, damages, injuries, claims, demands and costs (including court costs and attorneys' fees) arising or resulting from defects of the manufacturer or design thereof. However, without waiving any of its rights against the Manufacturer arising hereunder, the Company will save, indemnify and keep harmless the Manufacturer's assignee from and against, and defend the Manufacturer's assignee against, all losses, damages, injuries, claims, demands and costs (including court costs and attorneys' fees) whatsoever, arising on account of the Cars or the use or operation thereof without exception. These covenants of indemnity shall continue in full force and effect, notwithstanding the full payment of the purchase price and the conveyance of the Cars, as provided in Article 5, hereof, or the termination of this agreement in any manner whatsoever.

The Company shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of any or all of the Cars; provided, however, that the Manufacturer and any successor or successors to its manufacturing property and business shall not, as to the Cars, be relieved from its warranty covering workmanship and material hereinbefore in Article 9 set forth.

15. PATENT INDEMNITIES. Except in cases of designs, articles or materials specified by the Company or Railroad, to the extent same are not covered by patent rights existing in favor of the Manufacturer which the Manufacturer has the power to extend to third persons, the Manufacturer agrees to indemnify, protect and hold harmless the Company, Railroad, and the Manufacturer's assignee, and their respective successors and assigns, from and against, and defend each of them against, any and all liability, claims, demands, costs, charges and expenses, including royalty payments, court costs and attorneys' fees, in any manner imposed upon or accruing against the Company, the Railroad, or the Manufacturer's assignee, or their respective successors or assigns, because of the use in or about the construction or operation of any of the Cars of any design, article or material infringing or allegedly infringing on any patent or other right.

In the cases of designs, articles, or materials specified by the Company or Railroad, to the extent the same are not covered by patent rights existing in favor of the Manufacturer which the Manufacturer has the right to extend to third persons, the Company agrees to indemnify, protect, and hold harmless Manufacturer's assignee, and its successors and assigns, from and against, and defend each of them against, any and all liability, claims, demands, costs, charges, and expenses, including royalty payments, court costs, and attorneys' fees, in any manner imposed upon or accruing against Manufacturer's assignee, or its successors and assigns, because of the use in or about the construction or operation of the Cars of any design, article, or material infringing or allegedly infringing on any patent or other right.

In case any Car, or any component part thereof, not specified or required by Company or Railroad, is in any lawsuit held to constitute infringement and the use of such Car or component part is enjoined, the Manufacturer shall at

its option and at its own expense either procure for the Company or the Railroad the right to continue using such Car or component part or replace the same with noninfringing equipment subject to this agreement, or modify it so it becomes noninfringing or remove such Car and refund the purchase price and the transportation costs thereof.

Company will give notice to the Manufacturer of any claim known to the Company or Railroad from which liability may be charged against the Manufacturer hereunder, and Manufacturer shall settle or defend any such claim as it shall see fit.

16. ASSIGNMENTS. All or any of the rights, benefits and advantages of the Manufacturer under this agreement, including, without limitation, the right to receive the payments herein provided to be made by the Company, and the rights of repossession, may be assigned by the Manufacturer and reassigned by any assignee at any time and from time to time, provided, however, that no such assignment shall subject any assignee to or relieve the Manufacturer or the successor or successors to its manufacturing property and business from any of the obligations of the Manufacturer to construct and deliver the Cars herein contracted to be delivered in accordance with the specifications or to respond to its general warranty of title to the Cars under Article 5 hereof or its guaranties, warranties or indemnities contained in Articles 9 and 15 hereof, or relieve the Company of its obligations to the Manufacturer under Articles 13 and 14 hereof and this Article 16 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Company, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and

such assignee shall by virtue of such assignment acquire all of the Manufacturer's right, title and interest in and to the Cars and each and every part hereof, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company of the notification of any such assignment, all payments thereafter to be made by the Company hereunder shall, to the extent so assigned, be made to the assignee.

The Company recognizes that it is the custom of Car manufacturers to sell or discount agreements of this character and understands that the sale of this agreement, or of some or all of the rights of the Manufacturer hereunder, is contemplated. The Company expressly represents, for the purpose of assurance to any person, firm or corporation considering the purchase of this agreement or of all or any of the rights of the Manufacturer hereunder and for the purpose of inducing such purchase, that in the event of such purchase and of the assignment of this agreement by the Manufacturer as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price or such part thereof as may be assigned, together with interest thereon as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer or the successor or successors to its manufacturing property and business in respect of the Cars or the manufacture, construction, delivery, guaranty or warranty thereof or title thereto, or in respect of the Cars or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer or the successor or successors to its manufacturing property and business. The provisions of this paragraph may be

relied upon by any such assignee as a continuing offer by the Company to waive any remedies which it might otherwise possess for the enforcement of any and all such obligations of the Manufacturer as against such assignee, which offer shall be conclusively presumed for all purposes to be accepted by the assignee by payment to the Manufacturer of the consideration for the purchase and assignment of this agreement.

If this Agreement shall have been assigned by the Manufacturer, and the assignee shall not make payment to the Manufacturer on the payment date with respect to the Cars delivered to the Company, the Manufacturer will promptly notify the Company of such event, and if such amount shall not have been previously paid by assignee, the Company will, not later than ninety days after such payment date, pay or cause to be paid to the Manufacturer the aggregate purchase price of the Cars delivered to the Company together with interest at the rate of fifteen percent (15%) per annum from such payment date to the date of payment by the Company.

In the event of any such sale, transfer or assignment, or successive sales, transfers or assignments by the Manufacturer, of title to the Cars and of the Manufacturer's rights hereunder in respect thereof, the Company will, whenever requested by such vendee, transferee or assignee, change the stencil markings on each side of each of the Cars so as to indicate the title of such vendee, transferee or assignee to such Cars and its succession to the rights of the Manufacturer hereunder, such marking to bear such words or legend as shall be specified by said vendee, transferee or assignee, subject to requirements of the laws of the States in which the Cars shall be operated relating to such marking for use on equipment covered by conditional sale agreements relating to railroad equipment. The cost of stenciling the first series of marking will be borne by the Manufacturer. The cost of additional stenciling in con-

nection with any subsequent assignment will be borne by Company. The term "Manufacturer," wherever used in this agreement, means Trinity Industries, Inc.; provided, however, to the extent that the rights of the Manufacturer hereunder shall have been assigned, as to any Car after it has been accepted by the Company, as herein provided, and for which payment has been received as provided in said assignment, the term "Manufacturer," with respect to such rights shall mean the assignee of the Manufacturer; but this proviso shall not limit or affect the obligations of the Manufacturer under this contract.

17. SUCCESSORS TO AND ASSIGNMENTS BY THE COMPANY The Company hereby represents and warrants that its execution of this Agreement and its assumption and undertaking of the obligations, duties and liabilities hereof have been expressly authorized. Except as stated in Article 18 hereof, this Agreement may only be assigned to any third party or parties concurrently with the full payment of any and all indebtedness, including principal and interest then existing. Manufacturer, or its assignee, shall, upon written request of the Company, and concurrently with full payment of any then existing indebtedness hereunder, including principal and interest, assign its interest in and to this Agreement to any such third party or parties as may be designated by Company. Except in accordance with Article 18 hereof or with the foregoing, Company will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of said Cars to any other firm, person or corporation without first obtaining written consent of the Manufacturer to such sale, assignment or transfer.

18. GUARANTY: ASSIGNMENT TO THE RAILROAD. The Company covenants and agrees with the Manufacturer and its assignee that the Company shall (a) use its best efforts to obtain all required approvals and consents from all creditors of the Railroad and all governmental instrumentalities to enable

the Railroad to execute and deliver a full and unconditional guaranty of all obligations of the Company hereunder, and (b) use its best efforts to cause the Railroad thereafter to execute and deliver to the Manufacturer or its assignee such a guaranty in form and substance satisfactory to the Manufacturer or its assignee, or (c) if all such consents and approvals shall not have been obtained and if such guaranty shall not have been executed and delivered to the Manufacturer or its assignee on or before December 31, 1980, at the request of the Manufacturer or its assignee, assign to the Railroad all the rights, titles, interests, and obligations of the Company under this agreement, under any assignments hereof, and in the Cars and cause the Railroad to assume and agree to perform and comply with all such obligations.

19. DEFAULTS. In the event that any one or more of the following events of default shall occur, to wit:

(a) The Company fails to pay when due the payment required of it as provided in Article 3(a) hereof; or

(b) The Company fails to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 3(b) hereof or any other sums payable to the Manufacturer's assignee in accordance with the terms hereof and such failure continues for seven days following the due date; or

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

(d) A petition for reorganization under Subchapter IV of Chapter 11 of the Bankruptcy Code, as now constituted or as said Subchapter IV may be hereafter amended is filed by or against the Company or Railroad and

the trustee or trustees fail to adopt this agreement and any lease of the Cars to the Railroad by the Company within 60 days of the date of the filing of such petition and all defaults occurring during such 60-day period are remedied; or

(e) The Company or the Railroad shall (i) become insolvent within the meaning of the Bankruptcy Code, as amended, or (ii) execute an assignment for the benefit of creditors or make a proposal to its creditors under any liquidation, conservatorship, bankruptcy, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws from time to time in effect and affecting the rights of creditors generally (collectively herein called "Debtor Relief Laws"), other than as contemplated in (d) preceding or under Subchapter IV of Chapter 113 of the Interstate Commerce Act (collectively herein called the "Railroad Proceedings"), or (iii) admit in writing its inability to pay its debts generally as they become due, or (iv) voluntarily seek, consent to, or acquiesce in the benefit or benefits of any Debtor Relief Law other than any Railroad Proceedings, or (v) become a party to any proceeding provided for by any Debtor Relief Law that could suspend or otherwise affect any of the rights of the Manufacturer or its assignee, other than pursuant to any Railroad Proceedings, or (vi) consent to the appointment of a receiver, trustee, liquidator, conservator, or similar person for it or all or substantially all of its assets, other than pursuant to any Railroad Proceedings.

(f) The Company or the Railroad shall involuntarily (i) have an order, judgment, or decree entered against it by any tribunal pursuant to any Debtor Relief Law (other than pursuant to any Railroad Proceedings) that could suspend or otherwise affect any of the rights granted to

Manufacturer or its assignee, and such order, judgment, or decree is not permanently stayed or reversed within 30 days after the entry thereof, or (ii) have a petition filed against it seeking the benefit or benefits provided for by any Debtor Relief Law (other than pursuant to any Railroad Proceedings) that would suspend or otherwise affect any of the rights granted to Manufacturer or its assignee, and such petition is not discharged within 30 days after the filed thereof.

(g) Any material written statement made by the Company in connection with the execution and delivery of this agreement or any assignment hereof or contained in any other document delivered in connection herewith or with any such assignment shall prove to have been incorrect, false or misleading when made;

(h) The Railroad or Company shall fail to pay First City Bank of Dallas at maturity, or within any applicable period of grace, any obligation for borrowed monies or advances due it, including any interest, or fail to observe or perform any term, covenant or agreement contained in any agreement executed by Company or Railroad with or assigned to First City Bank of Dallas (including any other conditional sales agreements and assignments thereof).

(i) The Company transfers or attempts to transfer its interest in or under this agreement without the consent of the Manufacturer; then at any time after the occurrence of such an event of default the Manufacturer may, upon written notice to the Company and upon compliance with any legal requirements then in force and applicable to such action by the Manufacturer, declare the entire purchase price of the Cars, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter to the extent legally enforceable the entire

sum shall bear interest at the rate of 18 percent per annum and the Manufacturer shall be entitled to judgment for the whole amount so due from the Company with interest at said rate, together with costs and expenses incurred by Manufacturer or its assignee, including reasonable attorneys' fees, and to collect said judgment out of any of the Company's property.

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

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

take or cause to be taken by its agent or agents immediate possession of the Cars, or any of them, and/or any replacements and improvements, and all present and future attachments and accessories thereof, without liability to return to the Company any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 20 expressly provided, and may remove the same from the use and possession of the Company or Railroad and for such purpose may enter upon the Company's or Railroad's premises where the Cars may be located, and may use and employ in connection with such removal any supplies, services and aids, and any available trackage and other facilities or means of the Railroad, with or without process of law; and the Company and Railroad shall deliver the Cars with all replacements, improvements, equipment, attachments and accessories thereof, at their own cost at such place or places on the Railroad's trackage as the Manufacturer may reasonably designate and for such purpose move the Cars in the usual manner and at the customary speed of trains, and in case of such retaking or delivery the Manufacturer shall have the right to store the same upon the premises of the Railroad without charge until the Manufacturer shall desire to remove the same therefrom but not in excess of six months. It is hereby expressly agreed by the Company and Railroad that performance of this agreement to deliver the Cars as hereinbefore provided is of the essence of the agreement between the parties and that upon application to any court of equity having jurisdiction in the premises, the Manufacturer shall be entitled to a decree against the Company and Railroad requiring specific performance hereof. It is further expressly agreed by the Company and Railroad that, until the Manufacturer shall have given notice of its election to retain possession of the Cars or until the sale of the Cars as hereinafter provided in this Article 20, the Company shall not be released from any of its obligations hereunder, including, but not by way of limitation, its obligations under Articles 4 and 7 hereof.

! If the Company makes default, as hereinbefore provided, than at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Cars as is hereinbefore provided, the Manufacturer (after retaking possession of the Cars as is hereinbefore in this Article 20 provided) may at its election, subject to Article 9.505 of the Texas Uniform Commercial Code, retain the Cars as its own and make such disposition thereof as the Manufacturer shall deem fit, and in such event all the Company's and Railroad's rights in the Cars will thereupon terminate and all payments made by the Company may be retained by the Manufacturer as compensation for the use of the Cars by the Company or the Railroad; or the Manufacturer, with or without retaking possession thereof, may, at its election, sell the Cars, or any of them, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Company or the Railroad or of any other party claiming, by through or under either of them at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the Cars, shall be credited on the amount due to the Manufacturer under the provisions of this agreement, including taxes and other charges imposed upon the Manufacturer in connection with said Cars. Written notice of the Manufacturer's election to retain the property for its own use may be given to the Company by telegram or registered mail addressed to the Company at 701 Commerce Street, Dallas, Texas 75202, at any time during a period of thirty (30) days after declaring the entire purchase price immediately due and payable as herein-

before provided; and if no such notice is given, the Manufacturer shall be deemed to have elected to sell the Cars in accordance with the provisions of this Article 20.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place or places and at such time or times as the Manufacturer may fix, in one lot and as an entirety, or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such legal requirements, provided that the Company shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Company at 701 Commerce Street, Dallas, Texas 75202. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Company to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the Cars, or any of them, so offered for sale without accountability to the Company (except to the extent of surplus money received as hereinafter provided in the next to the last paragraph of this Article 20 and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Company hereunder. Each and every power or remedy hereby specifically given to the Manufacturer shall be in addition to every other power or remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to

time and simultaneously and as often and in such order as may be deemed expedient by the Manufacturer. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Manufacturer in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy, or shall be construed to be a waiver of any default or any acquiescence.

Any sums of money collected, realized or recovered by Manufacturer pursuant to this Article 20 shall be credited or paid to cover (i) expenses of Manufacturer or its assignee as provided for herein, (ii) accrued interest due and owing Manufacturer or its assignee (iii) outstanding principal due and owing Manufacturer or its assignee, and (iv) all other sums due and owing hereunder, in the order of payment listed herein.

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

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

then in such suit the Manufacturer may recover reasonable attorneys' fees, and other reasonable expenses and the amount thereof shall be included in such judgment.

21. WAIVER. The Company, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of the Cars and to sell them and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Manufacturer's rights hereunder, except such notices as are expressly required by the terms of this agreement, and any and all rights of redemption.

22. EXTENSION NOT A WAIVER. Any extension of time granted by the Manufacturer to the Company for the payment of any sum due under this agreement, whether that extension be for an immediate payment or for final payment, shall not be deemed a waiver of the title of the Manufacturer reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

23. RECORDING. The Company will cause this Agreement, any assignments hereof or of any interests herein and any supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 11303 of the Interstate Commerce Act; and the Company will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of proper protection, to the satisfaction of counsel for the Manufacturer, of its title to the Cars and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Company will promptly furnish to the Manufacturer

certificates or other evidences of such filing and recording, and an opinion or opinions of counsel for the Company with respect thereto, satisfactory to the Manufacturer.

24. PAYMENT OF EXPENSES. The Company will pay all costs, taxes, charges and expenses, except the counsel fees of the Manufacturer, but including counsel fees of the first assignee, incident to the preparation, printing, execution, acknowledgment, filing, registering and recording of this agreement and of the first assignment by the Manufacturer of title to the Cars and of any instrument supplemental hereto or amendatory hereof and of any declaration of the payment in full of the purchase money due hereunder and other enforcement of the terms of this agreement, and of the replacement or replacements of said Cars.

25. NOTICE. Any notice hereunder to the Company shall be deemed to be properly served if delivered or mailed to the Company at 701 Commerce Street, Dallas, Texas 75202, or at such other address as may have been furnished in writing to the Manufacturer by the Company. Any notice hereunder to the Manufacturer shall be deemed to be properly served if delivered or mailed to the Manufacturer at 4001 Irving Blvd., Box 10587, Dallas, Texas 75207, or at such other address as may have been furnished in writing to the Company by the Manufacturer. Any notice hereunder to any assignee of the Manufacturer or of the Company shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Manufacturer or the Company, as the case may be, by such assignee.

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

27. ARTICLE HEADINGS. All article, paragraph or division headings are inserted for convenience only and will not affect any construction or interpretation of this agreement.

28. EFFECT AND MODIFICATION OF AGREEMENT. This agreement supercedes all prior agreements and understandings and, together with the specifications hereinabove referred to, constitutes the entire agreement between the Company and the Manufacturer with respect to the sale of the Cars herein referred to. No variation or modification of this agreement and no waiver of any of its provisions or conditions will be valid unless in writing and signed by the duly authorized officers of the Manufacturer and the Company and any assignee about which the Company has been notified.

29. SURVIVAL. All covenants, agreements, undertakings, representations, and warranties made in this agreement shall survive all closings hereunder and shall not be affected by any investigation made by any party. The indemnities under Article 15 hereof shall survive the term of this agreement.

30. LAW GOVERNING. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of the State of Texas and the United States of America.

31. SEVERABILITY. If any provision of this agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable; this agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid, or unenforceable provision there

shall be added automatically as a part of this agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

32. MAXIMUM INTEREST RATE. Regardless of any provision contained in this agreement, the Manufacturer shall never be entitled to receive, collect, or apply, as interest on any sums owed hereunder, any amount in excess of the highest applicable lawful rate, and, in the event the Manufacturer ever receives, collects, or applies as interest any such excess, such amount which would be excessive interest shall be deemed a partial prepayment of principal and treated hereunder as such; and, if all principal under this agreement is paid in full, any remaining excess shall forthwith be paid to the Company. In determining whether or not the interest paid or payable, under any specific contingency, exceeds the highest applicable lawful rate, the Company and the Manufacturer shall, to the maximum extent permitted under applicable law, (a) exclude voluntary prepayments and the effects thereof, and (b) amortize, prorate, allocate, and spread, in equal parts, the total amount of interest throughout the entire contemplated term of this agreement so that the interest rate is uniform throughout the entire term of this agreement; provided that, if all sums owing hereunder are paid in full prior to the end of the full contemplated term hereof, and if the interest received for the actual period of existence hereof exceeds the highest applicable lawful rate, the Manufacturer shall refund to the Company the amount of such excess, and, in such event, the Manufacturer shall not be subject to any penalties provided by any laws for contracting for, charging, taking, reserving, or receiving interest in excess of the highest applicable lawful rate.

33. BINDING EFFECT. This agreement is binding upon and inures to the benefit of the Company and the Manufacturer, and the respective successors and

assigns of each; provided that the Company may not, without the prior written consent of the Manufacturer, assign any of its rights, duties or obligations hereunder.

IN WITNESS WHEREOF, Trinity Industries, Inc., has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions; and SOUTHWESTERN STATES MANAGEMENT CO. has caused these presents to be executed and its seal to be affixed by its duly elected and authorized officers pursuant to lawful resolutions, all as of the day, month, and year first above written.



Neil O. Sharp  
Assistant Secretary

TRINITY INDUSTRIES, INC.

BY Richard A. Martin  
Vice President

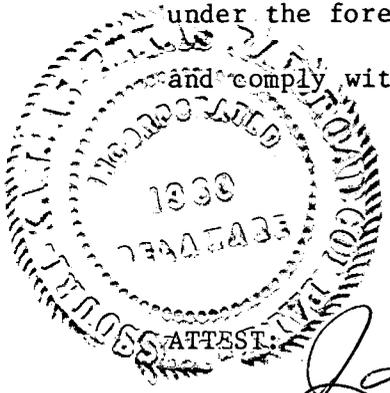


SOUTHWESTERN STATES MANAGEMENT CO.

BY W. H. Zeidel  
Vice President

The Railroad hereby executes a counterpart of this Conditional Sale Agreement to confirm to the Manufacturer and its assignee that (i) upon receipt of all required consents and approvals described in clause (a) of Article 18 of the foregoing agreement, the Railroad will execute and deliver to the Manufacturer or its assignee a full and unconditional guaranty, in form and substance acceptable to the Manufacturer or its assignee, of all obligations of the Company under the foregoing, or (ii) in the event the Company is ever

required under clause (c) of Article 18 of the foregoing agreement to assign to the Railroad all the Company's rights, titles, interests, and obligations under the foregoing agreement, the Railroad shall assume and agree to perform and comply with all such obligations.



MISSOURI-KANSAS-TEXAS RAILROAD COMPANY  
By *James H. Hubert*  
Vice President

*[Signature]*  
Assistant Secretary

State of Texas )  
                  )  
County of Dallas )

On this 16th day of October, 1980, before me personally appeared Richard A. Martin, to me personally known, who, being by me first duly sworn, says that he is a Vice President of TRINITY INDUSTRIES, INC., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Sue Matlock*  
Notary Public in and for Dallas County,  
Texas

My Commission expires: 12/31/80

