

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

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12414

November 14, 1980

RECORDATION NO. Filed 1425

NOV 17 1980 - 3 25 PM

0-322A063

IN REPLY REFER TO: 410.043-65B

INTERSTATE COMMERCE COMMISSION

No. 1

Date NOV 17 1980

Fee \$ 50.00

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

ICC Washington, D. C.

Re: Conditional Sale Agreement and Agreement and Assignment dated as of November 14, 1980, between Trinity Industries, Inc., and Southwestern States Management Co., assigned to Texas Commerce Bank National Association, 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 seven executed counterparts of the Conditional Sale Agreement dated as of October 30, 1980, between Trinity Industries, Inc. as Manufacturer and Seller, 4001 Irving Blvd, P. O. Box 10587, 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 Texas Commerce Bank National Association, 712 Main Street, P. O. Box 2558, Houston, Texas 77001, 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 4400 - 4499 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.

Very truly yours,

Arthur M. Albin
Arthur M. Albin

NOV 17 3 19 PM '80
DECKET FILES
BRANCH

da
Enc.

cc: Ms. Susan Kahn, Texas Commerce Bank
R. A. Martin, Trinity Industries
K. R. Ziebarth

Stew Knauth
Chumley

Interstate Commerce Commission
Washington, D.C. 20423

11/17/80

OFFICE OF THE SECRETARY

Arthur M. Albin
Missouri-Kansas-Texas RR Co.
701 Commerce Street
Dallas, Texas 75202

Dear **Sir:**

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on **11/17/80** at **3:25pm**, and assigned recordation number(s).

12414 & 12414-A

Sincerely yours,

Agatha L. Mergenovich
Agatha L. Mergenovich
Secretary

Enclosure(s)

SE-30
(7/79)

TRINITY INDUSTRIES, INC.

and

SOUTHWESTERN STATES MANAGEMENT CO.

12414
RECORDATION NO. Filed 1425

NOV 17 1980 -3 25 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 30, 1980

FOR 100 COVERED TRIPLE HOPPER CARS

AGREEMENT AND ASSIGNMENT

between

TRINITY INDUSTRIES, INC.

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

and

SOUTHWESTERN STATES MANAGEMENT CO.

Dated as of October 30, 1980

THIS AGREEMENT, dated as of October 30, 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 corporation organized under the laws of the State of Missouri, with an office in Dallas, Texas (hereinafter called the "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") as follows:

One hundred (100) 100-ton, 4,750 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: 4400 - 4499 both inclusive.

2. DELIVERY. The Manufacturer will deliver the Cars to the Company free on tracks at Fort Worth, Texas, not later than December 15, 1980, Any Cars not delivered and accepted on or before the 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, 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 January 15, 1981, 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. This 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 100 Cars shall be not more than \$4,300,000.

Conditional only upon the receipt and acceptance 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 at such bank or trust company in 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 (including freight charges) of all said Cars in excess of the sum of \$3,600,000 shall be paid by Company to Manufacturer upon receipt of invoice therefor. The amount paid pursuant to this subparagraph (a) by the Company shall hereinafter be referred to as the "downpayment."

(b) \$3,600,000 of the actual full purchase price of said Cars (being the deferred purchase price thereof) shall be paid by the Company in one installment of principal in the amount of \$300,000 to be due and payable on October 9, 1981, and the final payment of principal shall be due and payable three hundred sixty calendar days following the closing of the purchase of the fiftieth Car, being the date of the second closing (there being four closings with each closing to cover purchase of 25 cars), but no later than November 25, 1981. Interest from the amount of the balance remaining unpaid from time to time shall be due and payable at the rate of one and one-half percent (1-½%) per annum over the Prime Rate as defined herein, and shall be due and payable on the 90th calendar day following the second closing

date, the 180th calendar day following the second closing date, the 270th calendar day following the second closing date and the 360th calendar day following the second closing date, provided however, that all accrued and unpaid interest shall be due and payable no later than November 25, 1981. The term Prime Rate as used herein shall mean the prime rate as announced from time to time by Texas Commerce Bank National Association (the "Bank") and thereafter entered in the minutes of the Bank's Loan and Discount Committee. Without notice to Company or any other party, the Prime Rate shall automatically fluctuate upward or downward as and in the amount by which said Prime Rate shall fluctuate.

The Company will pay, to the extent legally enforceable, interest at the rate of one and one-half percentage points per annum over and above the then payable interest rate 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.

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 from 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.

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. If any such expenses or taxes shall have been paid by the Manufacturer, the Company shall reimburse the Manufacturer on presentation of invoice, and any sums of money so paid by Manufacturer shall be secured by and under this contract. Any such sums of money shall be paid by Company at the rate of interest heretofore stated in Article 3 to be applicable to past due amounts.

5. TITLE TO THE EQUIPMENT. 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 its identifying number 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 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 may cause the Cars to be lettered with appropriate words or marks for convenience of identification of the Company's interest therein.

When and only when the Manufacturer, or if this Agreement has been assigned, the Assignee, has been paid the full purchase price of the Cars, together with interest and any and 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 so to do, 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.

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 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 Car 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.

7. INSURANCE. The Company will at all times and at its own expense keep the Cars insured (with loss payable to the Manufacturer or the Company as their interest may appear) 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 net loss per occurrence, or in the event such a deductible becomes unobtainable, in such amount as may be reasonably obtainable. Any monies paid under any such insurance policy shall be applied to the then unpaid balance applicable to the Car with respect to which the monies are so paid or shall be applied toward the replacement or repair of such Car. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Manufacturer until replacement or repair of the 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 monies receivable by or payable to the Company from any railroad 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.

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

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, RULE 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. 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 additionally will furnish to Manufacturer a Certificate of Insurance in a 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, 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, from and after delivery of the Cars by the Manufacturer to the Company, but only upon and subject to all the terms and conditions of this Agreement. In addition, so long as Company shall not be in default under this Agreement or Agreement and Assignment, said Cars, or any of them, may be operated on the trackage of any other railroad within the boundaries of the continental United States for and in connection with unit train operations or purposes, also subject however to all of the terms and conditions contained in 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 and its 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 and 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. Any sum of money paid by the Manufacturer in discharge of liens or encumbrances on said Cars shall be an obligation of the Company and shall be secured by and under this contract and shall bear interest at the rate heretofore stated in Article 3 to be applicable to past due amounts.

14. COMPANY'S INDEMNITIES AND GUARANTEES. The Company will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, arising on account of the Cars or the use or operation thereof, except for any and all losses, damages, injuries, claims, and demands arising or resulting from defects of the manufacture 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 all losses, damages, injuries, claims, and demands whatsoever, arising on account of the Cars or the use or operation thereof without exception. This covenant 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 or Railroad, and its assigns, from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or Railroad, or its 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 claimed to infringe on any patent or other right.

In case any unit of the Cars, or any part thereof, is in such suit held to constitute infringement and the use of such unit or 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 unit or part or replace the same with noninfringing equipment subject to the Agreement, or modify it so it becomes noninfringing or remove such unit and first pay off all indebtedness existing at that time against such unit to the assignee financing same and thereafter pay the balance of the purchase price and the transportation and installation costs thereof to Company, once assignee has been fully paid.

Company shall give notice to the Manufacturer of any claim known to the Company from which liability may be charged against the Manufacturer hereunder, and Manufacturer shall settle or defend any such claim as it shall see fit. The foregoing states the entire liability of the Manufacturer with regard to patent enfringements regarding said equipment or any part thereof.

16. ASSIGNMENTS. All or any of the rights, benefits and advantages of the Manufacturer under this Agreement, including 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 guaranties, warranties or indemnities contained in Articles 9 and 15 hereof or relieve the Company of its obligation to the Manufacturer under Articles 3 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 thereof, 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 to the Cars or the manufacture, construction, delivery, guaranty or warranty thereof, or in respect to 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. Any and all such obligations, however arising, shall be and remain enforceable by the Company against and only against the Manufacturer and 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, as provided in Article 6 of the Assignment, the Manufacturer will promptly notify the Company of such event, and if such amount shall not have been previously paid by the 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 connection 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 and that all of the obligations of the Company then existing or to accrue under this Agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the

railways and properties of the Company, and that upon any sale, lease, transfer or assignment of said railways or properties any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations. The Company shall not sell substantially all of its assets without Manufacturer's assignee's prior written consent.

The 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 or its assignee to such sale, assignment or transfer.

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

(a) the 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 hereof; or

(b) 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

(c) 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;

(d) the Company shall (i) apply for or consent to the appointment of a receiver, trustee or liquidator of itself or of its property, (ii) be unable or admit in writing its inability to pay its debts as they mature, (iii) make a general assignment for the benefit of creditors, (iv) be

adjudicated a bankrupt or insolvent, (v) file a voluntary petition in bankruptcy or a petition or answer seeking reorganization or an arrangement with creditors or to take advantage of any insolvency law or an answer admitting the material allegations of a petition filed against it in any bankruptcy, reorganization or insolvency proceeding; or corporate action shall be taken by it for the purpose of effecting any of the foregoing; or within 30 days after the commencement of an action against the Company seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such action shall not have been dismissed or all orders or proceedings thereunder affecting the operations or the business of the Company stayed, or the stay of any such order or proceeding shall thereafter be set aside; or an order, judgment, or decree shall be entered, without the application, approval or consent of the Company, by any court or governmental agency of competent jurisdiction, approving a petition seeking reorganization of the Company or appointing a receiver, trustee, liquidator, intervenor or the like of the Company or of all or a substantial part of its assets, and such order, judgment, or decree shall continue unstayed and in effect for any period of 60 consecutive days;

(e) the Company shall fail to pay Texas Commerce Bank National Association 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 between it and the Texas Commerce Bank National Association (including any other conditional sales agreements and assignments thereof).

(f) final judgment(s) for the payment of money in excess of the aggregate of \$250,000.00 shall be rendered against the Company and the same shall remain undischarged for a period of thirty (30) days during which execution shall not be effectively stayed; or

(g) the Company transfers its interest in or under this Agreement without the consent of the Manufacturer; or

(h) either the Company or the Company's Lessee of said Cars defaults under the terms and provisions of that certain Car Lease Agreement between them dated of even date herewith and any such default is not cured within the time limits provided for therein; or

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 one and one-half percentage points per annum over the then current interest rate, 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 attorney's fees, and to collect said judgment out of any of the Company's property.

The Manufacturer may at its election (and, if before sale as provided in Article 19 or before full performance of this agreement all costs and expenses of the Manufacturer incidental to any such default and to the enforcement by the Manufacturer of the provisions hereof, including reasonable attorney's fees, and all sums which shall then have become due and payable by the 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 or termination 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 default had existed and no such declaration or termination had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the 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 right, upon any other default, or impair any right or remedies consequent thereon.

19. 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 19 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 its own cost at such place or places on its railroad 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 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 requiring specific performance hereof. It is further expressly agreed by the Company 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 19, 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, then at any time thereafter during the continuance of such default, and after declaring the entire purchase price immediately due and payable as hereinbefore provided, the Manufacturer (after retaking possession of the Cars as is hereinbefore in this Article 19 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 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 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 of any other party claiming by, through or under it at law or in equity, at public or private sale and with or without advertisement as the Manufacturer may determine, all subject to and in compliance with any legal requirements then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Manufacturer in taking possession of, removing, storing and selling the 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 hereinbefore 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 19.

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 or Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the 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 19), and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the 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.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due 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 therefor 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.

20. APPLICABLE STATE LAWS. Any provisions of this agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Company to the full extent permitted by law, to the end that this agreement shall be deemed to be a conditional sale and enforced as such.

The 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.

21. 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.

22. 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.

23. 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 of the replacement or replacements of said Cars.

24. 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.

25. 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.

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

27. EFFECT AND MODIFICATION OF AGREEMENT. This agreement of conditional sale, 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.

28. 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.

IN WITNESS WHEREOF, 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.

TRINITY INDUSTRIES, INC.

By Richard A. Mautner
Vice President

ATTEST:

Richard A. Foye
Assistant Secretary

SOUTHWESTERN STATES MANAGEMENT CO.

By H. O. Brandt
Vice President

ATTEST:

J. D. [Signature]
Assistant Secretary

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 14th day of November, 1980, before me personally appeared
Richard A. Martin, to me personally known, who being
by me 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.

Sam Matlock
Notary Public in and for Dallas County, TX

My Commission expires: 12/31/80

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 14th day of November , 1980, before me personally appeared
H. O. Brandt, to me personally known, who, being by me duly
sworn, says that he is a Vice President of SOUTHWESTERN STATES MANAGEMENT CO., 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 corpor-
ation.

Ray Reynolds
Notary Public in and for Dallas County, TX

My Commission expires: December 1, 1981

AGREEMENT AND ASSIGNMENT, dated as of October 30, 1980, between TRINITY INDUSTRIES, INC., a corporation organized under the laws of the State of Texas, with an office in Dallas, Texas (hereinafter called the "Manufacturer"), TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a national banking association with its principal office at Houston, Texas (hereinafter called the "Bank") and SOUTHWESTERN STATES MANAGEMENT CO., a corporation organized under the laws of the State of Missouri, with an office in the City of Dallas, Texas (hereinafter called the "Company").

WHEREAS, the Manufacturer and the Company have entered into a Conditional Sale Agreement dated as of October 30, 1980, (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on conditions therein set forth, by the Manufacturer and the purchase by the Company of:

One hundred (100) 100-ton, 4,750 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 4400 - 4499 both inclusive, (together with all accessories and accessions to, and any tools, parts and equipment supplied by Manufacturer in connection with, such cars, herein collectively called the "Cars").

for an aggregate purchase price of not more than \$4,300,000.

NOW, THEREFORE, this Agreement and Assignment Witnesseth that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Bank to the Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. The Manufacturer hereby sells, assigns, transfers and sets over unto the Bank, its successors and assigns, all the right, title

and interest of the Manufacturer under the Conditional Sale Agreement (except the right to manufacture and the right to receive the initial cash payments specified in Article 3 thereof, reimbursement for taxes as provided in Article 4 thereof and adjustments for freight to the extent provided for therein) and all the right, title and interest of the Manufacturer in and to each Car in respect to which the Bank shall pay to the Manufacturer the purchase price thereof (provided, however, that the Bank shall not be required to pay the Manufacturer any amount on account of such purchase price in excess of \$3,600,000, the excess, if any, over \$3,600,000 for all Cars being represented by the Company's initial cash payment to the Manufacturer provided for in Article 3 of the Conditional Sale Agreement, or if less than 100 Cars are delivered by Manufacturer, then the Bank shall not be required to pay any amount of such purchase price in excess of \$36,000 for each such Car so delivered, but provided further in no case shall the Bank be required to pay in excess of 85% of the purchase price of each Car) pursuant to Article 3 thereof (such Cars being hereinafter called the Cars and in and to any and all amounts which may become due or owing by the Company to the Manufacturer under the Conditional Sale Agreement on account of the purchase price of each Car and interest thereon, and in and to any other sums becoming due under the Conditional Sale Agreement excluding the initial cash payment, together with all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Manufacturer for or on account of the failure of the Company to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this

Assignment shall not subject the Bank to transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect to its obligations to construct and deliver the Cars or in respect to its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Company from its obligations to the Manufacturer or the Bank under Articles 3, 14 and 16 of the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 of the Conditional Sale Agreement, all obligations of the Manufacturer to the Company in respect to the Cars shall be and remain enforceable by the Company, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby irrevocably authorizes and empowers the Bank, in the Bank's own name or in the name of the Bank's nominee, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Bank is or may become entitled under this Assignment and compliance by the Company the Conditional Sale Agreement, but without expense and liability to the Manufacturer and for the sole benefit of the Bank.

2. The Manufacturer will construct the Cars in full and complete accordance with the Conditional Sale Agreement and will deliver them on completion to the Company free of all claims, liens, and encumbrances and in accordance with the provisions of the Conditional Sale Agreement; notwithstanding this Assignment, it will perform and fully comply with each and all the

covenants and conditions of the Conditional Sale Agreement to be performed and complied with by the Manufacturer. The Manufacturer further covenants that it has good and lawful right to sell the Cars as aforesaid; and that it will warrant and defend the same against the demands of all persons whomsoever based on claims originating prior to the delivery of the Cars by the Manufacturer to the Company all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Company thereunder.

3. The rights of the Bank to the purchase price, less the amount of the initial cash payment, if any, made by the Company, of each Car accepted by the Company, and interest thereon, as well as any other rights which have been assigned hereunder, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect to the manufacture or delivery of the Cars or under Articles 9 and 15 of the Conditional Sale Agreement nor subject to any defense, offset, counterclaim, or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company by the Manufacturer or the successor or successors to its manufacturing business. Any and all such obligations shall be and remain enforceable by the Company against and only against the properties and business of the Manufacturer and successors to its manufacturing business and shall not be enforceable against the Bank or any party or parties in whom title to the Cars or any of them or the rights of the Manufacturer under the Conditional Sale Agreement shall vest by reason of this assignment or transfer or of successive sales, assignments or transfers;

and the Manufacturer will save harmless and idemnify the Bank from any expense, losses or damage suffered by reason of any defense, set-off, counterclaim, or recoupment of Company resulting from the breach by Manufacturer of any terms or conditions of said Conditional Sale Agreement. The Manufacturer will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgements, and costs that may result from the use of any patented article on the Cars at the time of delivery, except with regard to any appliances, devices or materials specified or required by the Company and not included in the Manufacturer's standard specifications. Company will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the use of any appliances, devices, or materials specified or required by the Company which are not included in the Manufacturer's standard specifications.

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

"TEXAS COMMERCE BANK NATIONAL ASSOCIATION, OWNER"

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

6. The Bank will pay to Manufacturer following delivery to and acceptance by Company of said Cars the full purchase price of said Cars (including freight charges) as stated in the Conditional Sale Agreement up to the aggregate amount of \$3,600,000, subject to Article 1 of this Agreement and Assignment, upon receipt by the Bank of the following documents in form and substance satisfactory to it, payment to be made within five days following receipt of said documents (such payment date(s) being the "closing date(s)"):

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

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

"TEXAS COMMERCE BANK NATIONAL ASSOCIATION, OWNER"

(c) A duplicate of the Manufacturer's invoice covering each Car so accepted, accompanied by or having endorsed thereon a certification by the Company as to the correctness of prices set forth in the invoice.

(d) An Opinion of Counsel from the Company substantially as set forth in Exhibit A, attached hereto and made a part hereof.

(e) An Opinion of Counsel from the Manufacturer substantially as set forth in Exhibit B, attached hereto and made a part hereof.

(f) Corporate resolutions of both Company and Manufacturer authorizing execution of the Conditional Sale Agreement and the Agreement and Assignment and compliance with the provisions thereof.

(g) Certificates of incumbency covering all officers or representatives of Company and Manufacturer executing any agreements or documents relating to the Conditional Sale Agreement, Agreement and Assignment or any related or required document.

Subject to the terms and provisions set forth herein and in the Conditional Sale Agreement, it is agreed that there shall be four (4) separate closing dates, each covering 25 Cars, and Bank shall not be obligated to make any payment to Manufacturer hereunder after January 31, 1981.

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

8. The Company may refinance the purchase of the Cars at a later date during the term hereof, in which event, the Company will give Bank 30 days written notice of its intention to refinance the purchase of the Cars. Following the expiration of said 30-day period and upon written instructions from Company to Bank, Bank will assign or otherwise transfer all of its rights,

title and interest in, to and under the Conditional Sale Agreement and this Agreement and Assignment to Company's designee(s) by means of such documentation reasonably required by Company or its designee(s), in any event, however, without recourse on, or representation or warranty by, the Bank, other than a special warranty of title; provided, however, that the execution of such assignment, transfer or other documents shall be contingent upon Company not then being in default and upon all principal, outstanding interest, and any other payments required to be paid pursuant to the Conditional Sale Agreement and this Agreement and Assignment being tendered to the Bank in immediately available funds concurrently with the delivery of said executed documents. Company shall reimburse Bank for any and all out-of-pocket expenses and attorneys' fees incurred by Bank in connection with the above-described transaction.

9. The Manufacturer hereby:

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

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

(c) represents and warrants to the Bank, its successors and assigns, that no payments (except the initial cash payments in amount equal to excess of final purchase price of all Cars over the sum of \$3,600,000) have been made by the Company to the Manufacturer under said Conditional Sale Agreement.

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

11. It is expressly understood and agreed that the right, title and interest of the Manufacturer assigned herein to Bank and the security interest created herein in favor of Bank shall also secure any and all indebtedness, including but not limited to accrued and unpaid interest, of Company to Bank resulting in connection with any Line of Credit, not to exceed \$1,000,000, made available by Bank to Company, during the term of this Agreement and the Conditional Sale Agreement attached hereto. All rights and remedies granted to Manufacturer under the terms and provisions of the Conditional Sale Agreement or arising pursuant to this Agreement and Assignment shall also be available to Bank and inure to the benefit of the Bank in the event Company breaches and/or defaults under the terms and provisions of any loan, hypothecation, pledge or other agreement executed by Company and Bank in connection with said Line of Credit and such breach or default is not promptly cured pursuant to the terms and provisions of the applicable loan, hypothecation, pledge or other agreement. In the event of such breach or default not promptly cured, Bank may exercise all of its rights and remedies hereunder or arising under Section 19 of the Conditional Sale Agreement attached hereto.

12. It is expressly understood and agreed that the right, title, and interest of the Manufacturer assigned herein to Bank and the security interest created herein in favor of Bank because of its payment to Manufacturer shall also secure any and all indebtedness of Company to Bank resulting in connection with any Irrevocable Letter of Credit issued during the term of this Agreement and Conditional Sale Agreement by Bank for the account of Company to EXXON Company U.S.A., Division of Exxon Corporation (hereafter "Exxon"), which Irrevocable Letter of Credit may be issued to Exxon in order to secure timely and full payments of amounts due and owing by Company to Exxon arising from Company's purchases of diesel fuel or other petroleum products from Exxon. All rights and remedies granted to Manufacturer under the terms and provisions of the Conditional Sale Agreement or as arising pursuant to this Agreement and Assignment shall also be available to Bank and inure to the benefit of the Bank in the event it is necessary for Bank to make any payments whatsoever to Exxon pursuant to the provisions of any such Irrevocable Letter of Credit.

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

14. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, together shall constitute but one and the same instrument. The Bank agrees to deliver one of such counterparts, or a certified copy thereof, to the Company. Although this Agreement and Assignment is dated for convenience as of October 30, 1980, 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.

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

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

TRINITY INDUSTRIES, INC.

By Richard A. Martin
Vice President

ATTEST:

Richard A. Foye
Assistant Secretary

TEXAS COMMERCE BANK NATIONAL ASSOCIATION

By Susan Edalen
Banking Officer

SOUTHWESTERN STATES MANAGEMENT CO.

By W. D. Russell
Vice President

ATTEST:

[Signature]
Assistant Secretary

STATE OF TEXAS)
)
COUNTY OF DALLAS)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Richard A. Martin, Vice President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TRINITY INDUSTRIES, INC., a corporation, and that he executed the same as the act of said corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14 day of November, 1980.

Aue Matlock
Notary Public in and for Dallas County, Texas

My Commission expires: 12/31/80

STATE OF TEXAS)
)
COUNTY OF DALLAS)

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared Susan E. Kahn, Banking Officer known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of TEXAS COMMERCE BANK NATIONAL ASSOCIATION, a Texas corporation, and that he executed the same as the act of said association for the purposes and consideration therein expressed, and in the capacity therein stated.

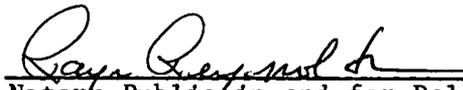
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 14th day of November, 1980.

Aue Matlock
Notary Public in and for Dallas County,
Texas

My Commission expires: 12/31/80

STATE OF TEXAS)
)
COUNTY OF DALLAS)

On this 14th day of November, 1980, before me personally appeared H. O. Brandt, to me personally known, who, being by me duly sworn, says that he is Vice President of SOUTHWESTERN STATES MANAGEMENT CO., that one of the seals affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



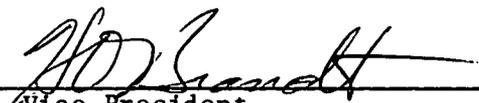
Notary Public in and for Dallas
County, Texas

My Commission expires: December 1, 1981

ACKNOWLEDGMENT OF NOTICE OF
ASSIGNMENT

Southwestern States Management Co. hereby acknowledges due notice of the assignment made by the foregoing Agreement and Assignment.

SOUTHWESTERN STATES MANAGEMENT CO.

By 

Vice President

DATED:

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT
701 COMMERCE STREET
DALLAS, TEXAS 75202

214-651-6736

November 14, 1980

WILLIAM A. THE
GENERAL COUNSEL
JOE C. CRAWFORD
GENERAL SOLICITOR

ARTHUR M. ALBIN
GENERAL ATTORNEY
MICHAEL E. ROPER
COMMERCE COUNSEL

IN REPLY REFER TO: 410.043-65B

Trinity Industries, Inc.
4001 Irving Boulevard
P. O. Box 10587
Dallas, TX 75207

and

Texas Commerce Bank National Association
P. O. Box 2558
712 Main Street
Houston, TX 77001

Re: Conditional Sale Agreement and Agreement and Assignment dated as of October 30, 1980, covering purchase of one hundred (100) 100-ton 4,750 cu.ft. covered triple hopper cars by Southwestern States Management Co.; and Car Lease Agreement between Southwestern States Management Co. and Missouri-Kansas-Texas Railroad Company and Assignment of Funds Due Under Car Lease Agreement, dated November 14, 1980

Gentlemen:

As counsel for Missouri-Kansas-Texas Railroad Company (the "Company") in connection with the Conditional Sale Agreement dated as of October 30, 1980, between Southwestern States Management Co. ("Southwestern") and Trinity Industries, Inc. (the "Manufacturer"), providing for the purchase of one hundred (100) 100-ton 4,750 cu.ft. covered triple hopper cars (the "Cars"), said Conditional Sale Agreement having been assigned to Texas Commerce Bank N.A. (the "Assignee") under an Agreement and Assignment dated as of October 30, 1980, I have examined such corporate and other documents and records and such questions of law as I have considered necessary or appropriate for this opinion. In addition, I have reviewed the Car Lease Agreement dated November 14, 1980, whereby Southwestern has leased the Cars to Missouri-Kansas-Texas Railroad Company, and the Assignment of Funds Due Under Car Lease Agreement, dated November 14, 1980, whereby Southwestern has assigned the Car Lease Agreement to the Assignee. On the basis of such examination, I advise you that in my opinion:

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

LAW DEPARTMENT

Trinity Industries, Inc. - 2 -
and
Texas Commerce Bank National Association

3. The Conditional Sale Agreement and the Agreement and Assignment, as filed and recorded with the Interstate Commerce Commission pursuant to Section 11303 of the Interstate Commerce Act, as amended, protects the title and interest of the Manufacturer and of the Assignee in and to the Cars in the United States of America and no filing, recording, or deposit (or giving of notice) with any other Federal, State or Local Government or agency or instrumentality thereof is necessary to protect the title and interest of the Manufacturer or the Assignee in and to the Cars.

4. No approval is required from any public regulatory body with respect to the entering into or performance of the Conditional Sale Agreement.

5. The entering into and performance of the Conditional Sale Agreement will not result in any breach of, or constitute a default on, the part of the Company under any indenture, mortgage, deed of trust, bank loan or credit agreement, or other instrument to which the Company is a party or by which it may be bound.

6. No mortgage, deed of trust, or other line of any nature whatsoever which now covers or affects, or which may hereafter cover or affect any property interest therein of the Company now attaches or hereafter will attach to the Cars themselves, nor in any manner affects nor will affect adversely the right, title and interest of the Manufacturer and of the Assignee therein, except for that certain security interest granted by the Company to Texas Commerce Bank National Association by Agreement dated as of October 30, 1980; which security interest attaches solely to the rights of the Company which accrue to the Company under the Conditional Sale Agreement in accordance with the provisions thereof.

Very truly yours,

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

Arthur M. Albin
General Attorney

AMA/da

LAW OFFICE OF
LOCKE, PURNELL, BOREN, LANEY & NEELY
(A PROFESSIONAL CORPORATION)
36TH FLOOR REPUBLIC NATIONAL BANK TOWER
DALLAS, TEXAS 75201

EXHIBIT B

TELECOPIER
746-7431
TWX 910-861-4469
LOCKE DAL

AREA CODE 214
746-7400
WRITER'S DIRECT DIAL NUMBER
746-7445

November 14, 1980

Texas Commerce Bank National Association
Houston, Texas 77001

Dear Sirs:

With reference to the construction, conditional sale and delivery of one hundred (100) 100 ton 4,750 cubic foot covered tripple hopper railroad cars by Trinity Industries, Inc. (hereinafter called "Trinity") to Southwestern States Management Co. (hereinafter called "Southwestern") and the assignment and transfer of the right, title and interest in and to such cars to Texas Commerce Bank National Association, as Assignee, we advise that we have examined, among other things:

- (a) The Articles of Incorporation of Trinity as amended to date;
- (b) The By-Laws of Trinity as amended to date;
- (c) The Conditional Sale Agreement (herein so called) dated as of October 30, 1980 between Trinity and Southwestern; and
- (d) Agreement and Assignment (herein so called) dated as of October 30, 1980 between Trinity, you and Southwestern.

On the basis of the foregoing and on the basis of such further examination of documents, corporate records, resolutions and matters of law as has been deemed relevant, it is our opinion that:

- (1) Trinity is a duly organized and existing corporation in good standing under the laws of the State of Texas, and has power and authority to own its properties and to carry on its business as now conducted;

- (2) The Conditional Sale Agreement has been duly authorized, executed and delivered by Trinity and assuming due authorization, execution and delivery by the other party thereto, is a legal and valid instrument binding upon Trinity and enforceable against Trinity in accordance with its terms;
- (3) The Agreement and Assignment has been duly authorized, executed and delivered by Trinity and assuming due authorization, execution and delivery by the other parties thereto, is a legal and valid instrument binding upon Trinity in accordance with its terms; and
- (4) You, as Assignee, are vested in all the rights, titles, interests, powers, privileges and remedies of Trinity purported to be assigned to the Assignee by the Agreement and Assignment.

Very truly yours,

LOCKE, PURNELL, BOREN, LANEY & NEELY

By _____

LAW OFFICE OF
LOCKE, PURNELL, BOREN, LANEY & NEELY
(A PROFESSIONAL CORPORATION)
36TH FLOOR REPUBLIC NATIONAL BANK TOWER
DALLAS, TEXAS 75201

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AREA CODE 214
746-7400
WRITER'S DIRECT DIAL NUMBER
746-7445

November 14, 1980

Texas Commerce Bank National Association
Houston, Texas 77001

Dear Sirs:

With reference to the construction, conditional sale and delivery of one hundred (100) 100 ton 4,750 cubic foot covered triple hopper railroad cars by Trinity Industries, Inc. (hereinafter called "Trinity") to Southwestern States Management Co. (hereinafter called "Southwestern") and the assignment and transfer of the right, title and interest in and to such cars to Texas Commerce Bank National Association, as Assignee, we advise that we have examined Bill of Sale No. 1 from Trinity to you, dated the date hereof.

On the basis of the foregoing and on the basis of such further examination of documents, corporate records, resolutions and matters of law as has been deemed relevant, it is our opinion that the aforesaid Bill of Sale has been duly authorized, executed and delivered by Trinity and title to the railcars described therein is validly vested in you, as Assignee, and such railcars, at the time of delivery thereof to Southwestern under the Conditional Sale Agreement, were free of all liens and other encumbrances except only the rights of Southwestern under the Conditional Sale Agreement.

Very truly yours,

LOCKE, PURNELL, BOREN, LANEY & NEELY

By _____