

SOUTHERN IRON & EQUIPMENT COMPANY,  
DIVISION OF U.S. RAILWAY MFG. CO.

REGISTRATION NO. 8175 Filed & Recorded

JAN 8 1976 - 10 00 AM

and

INTERSTATE COMMERCE COMMISSION

ROBERT W. MESERVE AND BENJAMIN H. LACY,  
TRUSTEES OF THE PROPERTY OF  
BOSTON AND MAINE CORPORATION, DEBTOR

CONDITIONAL SALE AGREEMENT

Dated as of September 15, 1975

100 -- 100-Ton 52'6" Gondola Cars

\_\_\_\_\_  
SOUTHERN IRON & EQUIPMENT COMPANY,  
DIVISION OF U.S. RAILWAY MFG. CO.

and

SHAWMUT BANK OF BOSTON, N.A.

AGREEMENT AND ASSIGNMENT

Dated as of September 15, 1975

CONDITIONAL SALE AGREEMENT dated as of September 15, 1975 between SOUTHERN IRON & EQUIPMENT COMPANY, DIVISION OF U.S. RAILWAY MFG. CO., a corporation organized and existing under the laws of the State of Illinois, (hereinafter called "Manufacturer") and ROBERT W. MESERVE and BENJAMIN H. LACY, as TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, DEBTOR IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD, [see In the Matter of Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-M], (together hereinafter called the "Railroad");

WITNESSETH THAT:

In consideration of the premises and of the mutual agreements hereinafter contained, the parties hereto agree as follows:

1. CONSTRUCTION AND SALE. The Manufacturer will construct, sell and deliver to the Railroad and the Railroad will purchase from the Manufacturer and accept delivery as hereinafter provided and pay therefor as hereinafter set forth, certain Cars, 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 52'6" Gondola Cars, which shall be constructed in accordance with a specification identified as "Specification Number 74-126 (W.O. 1263-B) for 100 100-Ton Gondola Cars for Boston and Maine Corporation, dated November 15, 1974 and revised June 11, 1975 and August 6, 1975, and Manufacturer's General Arrangement Drawing No. D-4059, dated July 30, 1975, as amended and supplemented by sheet entitled "Boston & Maine Corporation 100-Ton, 52'6" Gondola Cars Specialty Allowance Sheet" further designated "Est. 74-126 Feb. 14, 1975" and by correspondence between the parties.

2. DELIVERY. The Manufacturer will deliver the Cars to the Railroad, F.O.T. on railroad tracks at one or more of Manufacturer's plants in Chamblee and Atlanta in the State of Georgia and at Ashland City, Tennessee, as Manufacturer may determine, prior to June 1, 1976, or such later date or dates as shall be mutually agreed upon by the Manufacturer, and/or its assignee or assignees, and the Railroad.

The Cars which are delivered and accepted in the manner provided in this Article 2 prior to June 1, 1976 shall be paid for by the Railroad in accordance with Article 3 hereof. If any Cars are not delivered and accepted prior to June 1, 1976,

regardless of the reason therefor, the provisions of this agreement shall (unless the above specified delivery date shall have been extended by mutual agreement as hereinabove set forth) be inoperative only as to such Cars and the obligations of the parties hereto with respect to such Cars. If this agreement shall thus become inoperative, in the event that the delay in delivery is excused by reason of the succeeding paragraph hereof, the obligation of the Railroad to accept and pay for the Cars shall nevertheless remain in force and effect and the Railroad and the Manufacturer shall execute an agreement on terms substantially similar to this agreement with respect to such Cars, modified only to the extent necessary to provide for payment in cash upon delivery of the Cars, either directly or by means of a conditional sale agreement, equipment trust or other appropriate method of financing as the Railroad shall determine.

The Manufacturer shall not be responsible for failure to deliver said equipment within the time specified if such failure be caused by delays due to labor troubles, fires, floods, explosions or other accidents, or to delays of carriers or of subcontractors, or in receipt of material, or to any cause or causes (whether or not of the same general character as those herein specifically enumerated) beyond the Manufacturer's reasonable control.

Manufacturer will give the Railroad full opportunity to inspect Cars during construction at Manufacturer's plant or plants. On completion of each Car, the Railroad will arrange for final inspection thereof and the Railroad's representative will execute and deliver to the Manufacturer a certificate of inspection and acceptance (hereinafter called the "Certificate of Acceptance") covering all Cars found to be completed and in accordance with specifications, and stating that such Car (or Cars) has been delivered to and accepted by him on behalf of the Railroad and is marked in accordance with Article 5 hereof. Each Certificate of Acceptance with respect to the Cars covered thereby shall, subject to the provisions of Article 9 hereof, be final and conclusive evidence that such Cars conform in workmanship, material and construction, and in all other respects to the requirements and provisions of this agreement and have been delivered to and accepted by the Railroad hereunder.

3. PURCHASE PRICE. The purchase price of each Car shall be \$25,550.00 or a total for all 100 Cars of \$2,555,000.00 subject to change as hereinafter provided in part (b) of this Article 3. The Railroad will pay, or cause to be paid, the purchase price as follows:

- (a) On the first day of the month next following the date of delivery of each Car hereunder, and on the first day of each of the 179 succeeding months thereafter, an installment in an amount equal to 1/180th of the purchase price of such Car determined in accordance with this Article 3.
- (b) The aforesaid price of any Car is based on freight rates, labor rates and prices of material in effect as of February 14, 1975. The price shall be increased or decreased by any change in those items between February 14, 1975 and the date of delivery of each Car. Any increase or decrease in labor rates will cause the price to be adjusted on the basis of \$9.93 per Car for each 1¢ per hour change in rates. In arriving at the increased or decreased labor rates, the same shall include fringe benefit costs such as, but not limited to, payment into a pension plan, vacation and holiday pay, increased payroll taxes, insurance, and the like.

In addition, on the due date of each payment as above provided in part (a) of this Article 3, and monthly thereafter until the total price for all Cars has been fully paid, the Railroad will pay, or cause to be paid, interest from the date of acceptance and delivery of each Car, calculated on diminishing balances of the unpaid purchase price thereof, at the rate, or rates, which shall be two and one-half percent (2 1/2%) per annum above the "minimum commercial lending rate", so-called, in effect from time to time at the Shawmut Bank of Boston, N.A. in Boston, Massachusetts.

All payments hereinabove provided for shall be made by the Railroad to the Manufacturer at the office of its Treasurer, in Chamblee, Georgia, or at such bank or trust company as the Manufacturer and the Railroad may agree upon, 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 and shall be applied first to interest and then to principal.

In the event of any increase as aforesaid in the cost of any of the Cars, such increase shall be added to the first installment of the purchase price of the affected Cars which is to be paid by the Railroad.

The Railroad shall have the right, at any time to prepay the unpaid balance of the purchase price, in whole at any time, or in part from time to time, on any interest payment date, at par and accrued interest and without any premium; provided that any partial prepayment shall be applied to the next maturing installments of the price in the order of their maturities.

4. TAXES. All payments to be made by the Railroad hereunder will be free of expenses to the Manufacturer for collection or other charges and of the amount of any local, state or federal taxes (other than income taxes) or licenses hereafter levied or imposed upon, or measured by, this agreement and/or any sale, use, payment, shipment or delivery under the terms hereof, all of which expenses, taxes and licenses the Railroad assumes and agrees to pay in addition to the purchase price of the Cars. The Railroad will also pay, or cause to be paid, 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 Railroad and will keep at all times the Cars and every part thereof, free and clear of all taxes and assessments which might in any way affect the title of the Manufacturer. If any such expenses or taxes shall have been paid by the Manufacturer the Railroad shall reimburse the Manufacturer on presentation of invoice.

5. TITLE TO THE EQUIPMENT. The Manufacturer shall and hereby does retain the full legal title to and property in the Cars until the Railroad shall have made all of the payments and shall have kept and performed all of the undertakings and obligations of the Railroad hereunder notwithstanding the delivery of the Cars to and the possession and use thereof by the Railroad as herein provided. Any replacement of the Cars or of parts 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 Railroad 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.

The Railroad will cause the Cars to be identified by appropriate numbers and will not change the numbers of the Cars without first notifying the Manufacturer in writing. Before

shipment and delivery of the Cars hereunder, the Manufacturer shall furnish, place, and maintain plainly, permanently and conspicuously upon each side thereof and, until the Railroad has paid in full the purchase price of the Cars and has paid all other sums of money payable by it hereunder, and, until the delivery of the bills of sale or other instruments of transfer or discharge hereinafter specified, the Railroad will similarly keep and maintain on each side of each Car stencil markings bearing the name of the Manufacturer followed by the word "Owner", in letters not less than one inch in height, and the Railroad will replace immediately any such markings which may be removed or damaged or become illegible wholly or in part; provided that upon payment to Manufacturer upon assignment pursuant to Article 16 hereof the Railroad will substitute for the aforesaid markings and will furnish, place, and maintain plainly, permanently and conspicuously upon each side of each Car stencil markings bearing in letters of similar size the name of the assignee followed by the words "Owner, as Assignee of Southern Iron & Equipment Company, Division of U.S. Railway Mfg. Co., Manufacturer and Prior Owner." The Railroad will not place the Cars in operation, nor permit the Cars to be placed in operation, nor will it exercise any control or dominion over any part thereof until the stencil markings, as may be appropriate, have been so placed on both sides of each Car.

Except as above provided the Railroad 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 Railroad may cause the Cars to be lettered with appropriate words or marks for convenience of identification of the Railroad's interest therein.

When and only when the Manufacturer has been paid the full purchase price of the Cars, together with interest and any and all other payments as herein provided, and all of the Railroad's covenants and conditions herein contained have been performed by the Railroad, absolute right to the possession of, title to and property in the Cars shall pass to and vest in the Railroad without further transfer or action on the part of the Manufacturer except that the Manufacturer will, if requested by the Railroad so to do, execute and deliver to the Railroad bills of sale of the Cars transferring the title to and property in them to the Railroad free and clear of all liens and encumbrances created or retained hereby and will execute the record or for filing in public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Cars, provided however, that if a bill of sale is executed by an assignee of Manufacturer, it shall contain warranty only against defects in title resulting from acts of such grantor.

6. REPLACEMENT. In the event of loss or destruction of or irreparable damage to the Cars from any cause whatsoever until the total purchase price herein provided together with interest thereon and all other payments required hereby shall have been fully paid by the Railroad, the Railroad shall promptly and fully inform the Manufacturer in regard to such loss, destruction or damage. The Railroad shall at its election promptly pay to the Manufacturer a sum equal to the then unpaid balance applicable to such Cars or shall replace such Cars at its own cost with Cars of similar type and of substantially as good material or construction as that lost or destroyed and having a cost or fair value (whichever is less) at least equal to the fair value of the Cars replaced. The Railroad will cause any such replacement Cars to be marked as provided in Article 5 hereof and to be named with the same names and numbered with same road numbers as the Cars so replaced. Any such replacements of the Cars 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 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 Railroad will at all times and at its own expense keep the Cars insured in a company or companies approved by the Manufacturer against loss, damage or destruction to the extent and substantially in the manner that such risks are customarily insured against by similar railroad companies. All such insurance shall be for the benefit of the Manufacturer and the Railroad as their interests may appear and shall be payable to the Manufacturer. Any moneys paid under any such insurance policy shall be applied to the then unpaid balance applicable to the Cars or shall be applied toward the replacement or repair of such Cars. 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 Cars lost, destroyed or damaged, but upon proof satisfactory to the Manufacturer of such replacement or repair and if the Railroad is not then in default in any of the obligations hereunder the Manufacturer shall pay over such money to the Railroad. Any moneys receivable by or payable to the Railroad from any railroad or other person or corporation because of loss or destruction of or damage to such Cars shall be paid over to the Manufacturer to be held and applied by it as aforesaid. Upon the discharge by the Railroad of all of its obligations under this contract the Manufacturer will without cost to the Railroad transfer to the Railroad all then unexpired policies of insurance. All policies of such insurance shall be cancellable only after 15 days' prior notice to the Manufacturer.

8. MAINTENANCE AND REPAIR. The Railroad will at all times promptly and diligently cause to be maintained, or will maintain, the Cars in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes, or additions to the Cars or their equipment and appliances to the extent necessary or as required by the Interchange Rules or applicable laws or regulations of any State or governmental body, all at Railroad's own expense, provided, however, that the provisions of Article 6 hereof shall apply in case of irreparable damage or destruction.

9. MANUFACTURER'S WARRANTY. The Manufacturer warrants that the Cars will be built in accordance with the specifications and other matters set forth in Article 1 hereof and will be free from defects in material (except as to specialties incorporated therein not manufactured by the Manufacturer) and workmanship under normal use and service, the obligation of the Manufacturer under this Article 9 being limited to making good at Manufacturer's plant any part or parts of any unit which shall, within one year after the delivery of such unit to the Railroad, be returned to the Manufacturer with transportation charges pre-paid and which Manufacturer's examination shall disclose to its satisfaction to have been thus defective.

The warranty being expressly in lieu of all other warranties expressed or implied, Manufacturer neither assumes nor authorizes any person to assume for it any liability in connection with the sale and/or servicing of the Cars except as provided in Articles 9 and 15 hereof.

10. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. Until the total purchase price herein provided shall have been fully paid by the Railroad, the Railroad will be responsible for compliance by any operator of the Cars, and/or will itself comply, in all respects with all laws of the United States and of the States, Territories and countries 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 Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules (or will cause such to be done) until the total purchase price herein provided shall have been fully paid by the Railroad; provided, however, that the Railroad may, in good faith, contest the application of any such law or rule, in any reasonable manner which does not, in the judgment of the Manufacturer, affect the Manufacturer's title in and to the Cars.

11. REPORTS AND INSPECTIONS. The Railroad will furnish to the Manufacturer, when requested and at least once in every year until the total purchase price together with interest and all



other payments required hereby shall have been fully paid by the Railroad, a statement whether the Cars are in actual service, whether any Car has been destroyed and replaced by another, and the then location of the Cars. In addition thereto, the Railroad will furnish to the Manufacturer, if requested, once in each year, until the total purchase price together with interest and all other payments required hereby shall have been fully paid by the Railroad, a report of inspection by an authorized representative of the Railroad, or, if the Manufacturer so requests, by a competent disinterested party, satisfactory to the Manufacturer, certifying that said Cars have been maintained, and are in good order and repair.

The Railroad will promptly and fully inform the Manufacturer of the 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 Railroad will furnish to the Manufacturer a report of an authorized representative of the Railroad or, if the Manufacturer so requests, of a competent disinterested party, satisfactory to the Manufacturer, covering the nature and extent of any damage to the 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, together with interest and all other payments required hereby, has been fully paid by the Railroad. The Railroad, insofar as it may legally do so, will supply free transportation over its lines to designated agents of the Manufacturer for the purpose of enabling such agents to reach the point or points where the Cars are in operation, for the purpose of making such inspection.

12. USE AND LOCATION. The Railroad will, after the Cars have been accepted by it and until the total purchase price herein provided together with interest thereon and all other payments required hereby shall have been fully paid by the Railroad, keep the Cars, or cause the Cars to be kept, in the forty-eight continental States of the United States of America, in the District of Columbia, and in the Dominion of Canada (Maritime Provinces and the Province of Quebec), provided, however, that the Railroad may with the written consent of the Manufacturer remove the Cars to other jurisdictions upon giving the Manufacturer five (5) days' notice in writing stating where the Cars are to be transferred and the route to be followed in the transfer and upon filing, registering and recording this agreement at the Railroad's expense in and upon full compliance with all laws of such other jurisdiction or jurisdictions through which the Cars may pass or to which they may be removed, to the extent necessary for the protection of the

Manufacturer's title to the Cars and its rights under this agreement, and also upon providing the Manufacturer with an opinion of the Railroad's counsel to the effect that such filing, registering and recording meets with the legal requirements of such jurisdictions with respect to the filing, registering or recording of agreements of the character of this agreement, or to the effect that no such filing, registering or recording is necessary for the protection of the Manufacturer's title to the Cars.

13. PROHIBITION AGAINST LIENS. The Railroad will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Railroad and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the Cars, on a parity with or 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.

14. RAILROAD'S INDEMNITIES AND GUARANTIES. The Railroad will save, indemnify and keep harmless the Manufacturer from and against all losses, damages, injuries, claims and demands whatsoever, regardless of the cause thereof, arising on account of the Cars or the use or operation thereof. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the purchase price and the conveyance of the Cars, as provided in Article 5 hereof, or the termination of this agreement in any manner whatsoever.

The Railroad will bear the risk and shall not be released from its obligations hereunder in the event of any damage to, or the destruction or loss of 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 guaranty covering workmanship and material hereinbefore in Article 9 set forth.

15. PATENT INDEMNITIES. The Manufacturer for itself, and any successor or successors to its manufacturing property and business, agrees that it will indemnify and save harmless the Railroad and its assigns against all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of alleged infringement of patents covering the Cars, or any part or appliance thereof, by reason of the construction of the Cars by the Manufacturer and their use by the Railroad or others, excepting those patents covering devices and specialties designated by the Railroad to be used by the Manufacturer in the building of such

Cars and which are not manufactured by the Manufacturer and excepting those patents covering designs, systems, processes, formulae or combinations thereof not developed by the Manufacturer; and the Railroad, in like manner, shall indemnify and save harmless the Manufacturer and its assigns against all claims, suits, actions or other proceedings, and against all expenses incurred and judgments entered in or as a result of such actions, arising in any way out of alleged infringements of patents by reason of the use of or incorporation in the Cars of any of said devices or specialties so designated by the Railroad to be used by the Manufacturer in the construction of the Cars and which are not manufactured by the Manufacturer or by reason of designs, systems, processes or formulae or combinations thereof not developed by the Manufacturer. Immediate notice in writing shall be given by either party to the other of any claim of patent infringement presented to such party with respect to the Cars, and the party responsible for such infringement as above provided shall promptly undertake and assume the defense thereof.

16. ASSIGNMENTS BY THE MANUFACTURER. 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 Railroad, may be construed as applying to each Car separately as if this agreement was in fact an agreement covering only the Car or Cars covered by each such assignment, so that all or any of the rights, benefits and advantages of the Manufacturer under this agreement 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 Railroad of its obligations to the Manufacturer under Articles 14 and 15 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment and protect both the Manufacturer and any assignee.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all 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 Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to the assignee.

The Railroad 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 Railroad 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 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 Railroad by the Manufacturer or the successor or successors to its manufacturing property and business. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad 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 Railroad 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 or by similar payment to the assignor of any assignment after the first assignment.

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 Railroad will, whenever requested by such vendee, transferee or assignee, change the name plates to be attached on each side of each Car so as to indicate the title of such vendee, transferee or assignee to such Car and its succession to the rights of the Manufacturer hereunder, such plates 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 and other jurisdictions in which the Cars shall be operated relating to such

plates for use on equipment covered by conditional sale agreements relating to railroad equipment. The cost of obtaining and attaching the first series of such substituted plates will be borne by the Manufacturer. The cost of obtaining and attaching plates in connection with any subsequent assignment will be borne by such subsequent vendee, transferee or assignee, except as provided in the next succeeding paragraph.

The Manufacturer first hereinabove named shall at any time (upon the direction of the Railroad) assign its interest under this agreement in and to the Cars together with all rights, powers, privileges and remedies as to such Cars without recourse except as to its obligations to construct and deliver the Cars in accordance with the specifications and its obligations contained in Articles 9 and 15 hereof to any assignee nominated by the Railroad upon payment to such named Manufacturer of the total purchase price of the Car or Cars or any remaining balance thereof together with interest as aforesaid to the date of such assignment and any assignee or assignees of such named Manufacturer shall, upon receipt of said remaining unpaid balance and interest thereon to the date of payment, likewise assign its or their interest upon direction of the Railroad to any other nominee, if such assignment shall be required in order to subject the Car (by itself or together with other equipment) to the terms of an Equipment Trust, in which case the Railroad shall assume the expense of changing the name plates in connection with such assignment.

17. SUCCESSORS TO AND ASSIGNMENTS BY THE RAILROAD. The Railroad hereby represents and warrants that its execution of this agreement and its assumption and undertaking of the obligations, duties and liabilities hereof have been expressly authorized and that all the obligations of the Railroad then existing or to accrue under this agreement shall be assumed as a general obligation by any person or corporation acquiring title to or possession of the railways and properties of the Railroad, and that upon any sale, lease, transfer or assignment of said railways or properties any person or corporation acquiring title thereto or possession thereof shall also, as a condition to such acquisition, be bound by all such obligations.

The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this agreement nor transfer possession of any Car to any other firm, person or corporation without first obtaining the written consent of the Manufacturer to such sale, assignment or transfer.

This Article 17 shall apply, without limitation, to any transfer of Railroad's title to and possession of the Cars to Debtor or any other person (including successor Trustees of Debtor's property) or entity under authority of any Act of Congress or Court Order.

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

- (a) The Railroad fails to pay in full when due any installment of principal or of interest at the time and in the manner hereinbefore contracted to be paid as provided in Article 3 hereof; or
- (b) The Railroad shall, for more than 30 days after the Manufacturer shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this agreement on its part to be kept and performed or to make provision satisfactory to the Manufacturer for such compliance; or
- (c) A petition for reorganization under Section 77 of the Bankruptcy Act or similar statute is filed after the date of execution and delivery hereof by or against the Debtor, the Railroad, or the successors to any of them, and all the obligations of the Railroad hereunder shall not have been assumed by one or more trustees appointed in such proceedings, or otherwise given equivalent status, within 30 days after such appointment, if any, or within 60 days after the filing of such petition whichever shall be earlier; or
- (d) Any other proceedings are commenced by or against the Debtor, the Railroad, or the successor to any of them, which may result in a modification of the indebtedness owing hereunder on the part of the Railroad, and all obligations of the Railroad hereunder shall not have been assumed by one or more trustees appointed in such proceedings, or otherwise given equivalent status, within 30 days after such appointment, if any, or within 60 days after the filing of such petition whichever shall be earlier; or
- (e) The Railroad transfers or attempts to transfer the interest of the Railroad 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 Railroad and upon compliance with any legal requirements then in force and applicable

to such action by the Manufacturer, declare the then unpaid balances of the purchase price of the Cars, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the entire sum shall bear interest at the rate or rates established as provided in Article 3 hereof.

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, and all sums which shall then have become due and payable by the Railroad 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 Railroad; 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 will) waive any such event of default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such cured default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this agreement and that no such waiver, rescission or annulment shall limit or affect the Manufacturer's right, upon any other default, or impair any rights or remedies consequent thereon.

19. REMEDIES. If the Railroad makes default as hereinabove provided then at any time thereafter and during the continuance of such default the Manufacturer may, without any notice or demand except as required by this agreement or 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 Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from the use and possession of the Railroad and for such purpose may enter upon the Railroad's premises where the 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 Railroad shall deliver the Cars with all replacements, improvements, equipment, attachments and accessories thereof,

at its own cost at such place on the railroad as the Manufacturer may reasonably designate and for such purpose move or draw 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. It is hereby expressly agreed by the 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 Railroad requiring specific performance hereof. It is further expressly agreed by the Railroad that, until the Manufacturer shall have sold the Cars as hereinafter provided in this Article 19, the Railroad 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 Railroad makes default as hereinbefore provided then at any time thereafter during the continuance of such default, and after declaring the then unpaid balances of the purchase price immediately due and payable as hereinbefore provided, the Manufacturer with or without retaking possession thereof may sell the Cars, and any such replacements, improvements, equipment, attachments and accessories, free from any and all claims of the Railroad, or of any other party claiming by, through or under the Railroad 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.

The proceeds of any sale hereunder shall be applied, first to the payment of the expenses (including attorneys' fees and expenses) incurred by the Manufacturer in connection with enforcing its rights hereunder and to the payment of any other sums, not including any payments of price required by Article 3 hereof ("Payments") or interest thereon, payable by the Railroad hereunder; second, to the pro rata payment of the Payments or interest thereon, such application to be credited as between principal or interest as the Manufacturer shall determine; and lastly, any remaining surplus shall be paid over to the Railroad.

To the extent permitted by any such legal requirements, any sale hereunder may be held or conducted at such place and at such time as the Manufacturer may fix, and without the necessity of having at the place of sale the property to be sold, and in general in such manner as the Manufacturer may determine in compliance with any such legal requirements, provided that the Railroad



shall be given written notice of such sale as provided in any such applicable legal requirements, but in any event no less than ten (10) days prior thereto, by telegram or registered mail addressed to the Railroad. If such sale shall be a private sale permitted by such legal requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same or better price as offered by the intending purchaser. To the extent not prohibited by any legal requirements then in force and applicable to such sale, the Manufacturer may itself bid for and become the purchaser of the Cars so offered for sale without accountability to the Railroad (except to the extent of surplus money received as provided in the next preceding paragraph of this Article 19), and in payment of such purchase price the Manufacturer shall be entitled to the extent aforesaid to have credited on account thereof all sums due to the Manufacturer by the Railroad hereunder.

If, after applying all sums of money realized by the Manufacturer under the remedies herein provided, there shall remain any amount due to it under the provisions of this agreement, the Railroad shall and it hereby undertakes and promises to pay the amount of such deficiency to the Manufacturer upon demand, and if the Railroad fails to pay such deficiency the Manufacturer may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad, and such claim and satisfaction of such judgment are intended to have priority as an expense of administration in the present proceedings for reorganization of the Debtor, referred to at the beginning of this agreement, and in any other like or similar proceeding which may be instituted after the date of examination and delivery hereof against the Debtor, the Railroad, or the successor or assigns of any of them.

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, including without any limitation the Massachusetts Uniform Commercial Code, 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.

The Railroad will pay all reasonable attorneys' fees and other costs and expenses incurred by the Manufacturer in enforcing its remedies under the terms of this agreement or otherwise provided at law or in equity. In the event that the Manufacturer brings any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Manufacturer may recover reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

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

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

21. EXTENSION NOT A WAIVER. Any extension of time granted by the Manufacturer to the Railroad for the payment of any sum due under this agreement, whether that extension be for an intermediate 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 Railroad will cause this agreement and the first assignment thereof to be filed with the Interstate Commerce Commission as provided in Section 20c of the Interstate Commerce Act and with the Secretary of State of the Dominion of Canada; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register and record any and all further instruments required by law or reasonably requested by the Manufacturer for the purpose of such protection of its title and rights or for the purpose of carrying out the intention of this agreement.

23. PAYMENT OF EXPENSES. The Railroad will pay all costs, charges and expenses, except the counsel fees of the Manufacturer, 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.

24. NOTICE. Any notice hereunder to the Railroad shall be deemed to be properly served if delivered or mailed to the Railroad at 150 Causeway Street, Boston, Massachusetts or at such other address as may have been furnished in writing to the Manufacturer by the Railroad. Any notice hereunder to the Manufacturer first hereinabove named shall be deemed to be properly served if delivered or mailed to said Manufacturer at 5522 New Peachtree Road, Chamblee, Georgia 30341, or at such other address as may have been furnished in writing to the Railroad by said named Manufacturer. Any notice hereunder to any assignee of said named Manufacturer or of the Railroad 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 Railroad, as the case may be, by such assignee.

25. MANUFACTURER. The term "Manufacturer" as used herein shall, unless the context otherwise requires, mean the party Manufacturer first hereinabove named before any assignment of all and any of its rights and after assignment of all such rights the assignee for the time being of such rights; and after any assignment with respect to less than all of the rights hereunder, both the assignee for the time being of each such partial assignment as regards such rights and also the assignor as regards any rights hereunder not so assigned.

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. MODIFICATION OF AGREEMENT. This agreement of conditional sale, together with the specifications and the understanding between the parties with reference to price changes hereinabove referred to, constitutes the entire agreement between the Railroad 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 Railroad.

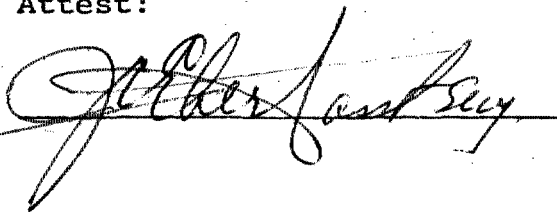
29. LAW GOVERNING. The terms of this agreement and all rights and obligations hereunder shall be governed by the laws of The Commonwealth of Massachusetts.


IN WITNESS WHEREOF, the parties hereto have, respectively, caused these presents to be executed under seal by duly authorized persons pursuant to lawful corporate resolutions in the case of the Manufacturer and court orders in the case of the Railroad, all as of the day, month and year first above written.

SOUTHERN IRON & EQUIPMENT COMPANY,  
DIVISION OF U.S. RAILWAY MFG. CO.

By 

Attest:



  
\_\_\_\_\_  
Robert W. Meserve (Seal))

  
\_\_\_\_\_  
Benjamin H. Lacy (Seal))

) BOTH AS TRUSTEES OF THE PROPERTY  
) OF BOSTON AND MAINE CORPORATION,  
) DEBTOR IN PROCEEDINGS AS FIRST  
) ABOVE SET FORTH, AND NOT IN EITHER  
) CASE INDIVIDUALLY

State of Georgia )  
County of *De Kalb* ) ss.:

I, *Grace C. McNeese*, a notary public, residing in the county and state aforesaid, do hereby certify that *Tom C. Campbell*, who is personally known to me, appeared this day before me personally and did acknowledge that he did sign, seal and deliver the foregoing instrument of his own free will and accord in the name and behalf and as *President* of Southern Iron & Equipment Company, Division of U.S. Railway Mfg. Co., in pursuance of full lawful authority and direction for the purposes therein named and expressed.

In witness whereof, I have hereunto set my hand and official seal, this *3rd* day of *January*, 1976.

*Grace C. McNeese*  
Notary Public

My commission expires \_\_\_\_\_, 19

Notary Public, Georgia, State at Large  
My Commission Expires Nov. 26, 1978

Commonwealth of Massachusetts )  
County of Suffolk ) ss.:  
)

I, HARRIET K. MAYCOCK, a Notary Public, hereby certify that Robert W. Meserve and Benjamin H. Lacy, both personally known to me, appeared this day before me personally and respectively acknowledged that they had signed, sealed, and delivered the foregoing instrument for the purposes named and expressed therein as their free act and deed as Trustees of the Property of Boston and Maine Corporation, Debtor in Proceedings for the Reorganization of a Railroad, and not individually, being thereunto duly authorized by order of the United States District Court for the District of Massachusetts entered in the Matter of Boston and Maine Corporation, Debtor, Docket No. 70-250-M in said Court, and not individually.

In witness whereof, I have hereunto set my hand and official seal this 16<sup>th</sup> day of December, 1975.

HARRIET K. MAYCOCK  
Notary Public

My commission expires 9/15, 1978

AGREEMENT AND ASSIGNMENT dated as of September 15, 1975 between SOUTHERN IRON & EQUIPMENT COMPANY, DIVISION OF U.S. RAILWAY MFG. CO., a corporation organized and existing under the laws of the State of Illinois, (hereinafter called the "Manufacturer"), and SHAWMUT BANK OF BOSTON, N.A., a national banking association organized and existing under and by virtue of the laws of the United States of America, (hereinafter called the "Bank").

Whereas, the Manufacturer and ROBERT W. MESERVE and BENJAMIN H. LACY, as TRUSTEES OF THE PROPERTY OF BOSTON AND MAINE CORPORATION, DEBTOR IN PROCEEDINGS FOR THE REORGANIZATION OF A RAILROAD, (together hereinafter called the "Railroad"), have entered into a Conditional Sale Agreement dated as of September 15, 1975, (hereinafter called the "Conditional Sale Agreement"), covering the manufacture, sale and delivery, on the conditions therein set forth, by the Manufacturer and the purchase by the Railroad of One Hundred (100) 100-ton 52'6" Gondola Cars, all as more particularly described therein for a purchase price of \$2,555,000.00 subject to change and payable with interest as provided therein.

NOW, THEREFORE, this Agreement and Assignment Witnesseth that in consideration of the sum of one dollar (\$1) 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 deliver the Cars and the right to receive reimbursement for taxes as provided in Article 4 thereof and adjustments for freight and insurance to the extent provided for therein) and all the right, title and interest of the Manufacturer in and to the Cars in respect of which the Bank shall make payment as provided in Article 6 hereof and in and to any and all amounts (other than those hereinabove excluded) which may be or become due or owing by the Railroad to the Manufacturer under the Conditional Sale Agreement, together with all the Manufacturer's rights, powers, privileges and remedies under the Conditional Sale Agreement (without any recourse, however, against the Manufacturer for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement); provided, however, that this Assignment shall not subject the Bank to, or transfer, or pass, or in any way affect or modify, the liability of the Manufacturer or of any successor or successors to its manufacturing properties and business in respect of its obligations to construct and deliver the Cars

or in respect of its obligations contained in Articles 9 and 15 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Manufacturer or the Bank under Articles 2, 3, 4, 14 and 15 of the Conditional Sale Agreement. Notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 16 thereof, all obligations of the Manufacturer to the Railroad in respect of the Cars shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Manufacturer and any successor or successors to its manufacturing properties and business. In furtherance of the foregoing assignment and transfer, the Manufacturer hereby 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 Railroad with the terms and agreements on its part to be performed under 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 Railroad 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, set forth 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 Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder.

3. The rights of the Bank to the purchase price of the Cars, when accepted by the Railroad, and interest thereon, as well as any other rights which have been assigned hereunder, shall not be subject to any defense, offset, counterclaim or recoupment whatsoever arising out of a breach by the Manufacturer or by any successor or successors to its manufacturing properties or business of any obligations in respect of the manufacture or delivery of the 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 Railroad by the Manufacturer or the successor or successors to its manufacturing business. Any and all such



obligations shall be and remain enforceable by the Railroad against and only against the Manufacturer and the successor or successors to its manufacturing properties and business and shall not be enforceable against the Bank or any party or parties in whom title to the Cars 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. The Manufacturer will save, indemnify and keep harmless the Bank from and against any and all royalties, damages, claims, suits, judgments and costs that may result from the use of any patented article on the Cars at the time of delivery, except with regard to any devices or specialties designated by the Railroad to be used by the Manufacturer in the building of such Cars and which are not manufactured by the Manufacturer.

4. The Manufacturer agrees that at the time of shipment and delivery of the Cars to the Railroad there will have been and will be plainly, permanently and conspicuously placed upon each side of each Car a stencil marking indicating the Manufacturer as Owner, and Manufacturer further agrees that promptly upon payment for the Cars by the Bank as provided in Article 6 hereof it will cause the Railroad to place plainly, permanently and conspicuously on each side of each such Car in place of the aforesaid marking stencil markings bearing the following inscription in letters of not less than one inch in height:

"Shawmut Bank of Boston, N.A., Owner, as Assignee of  
Southern Iron & Equipment Company, Division of U.S.  
Railway Mfg. Co., Manufacturer and Prior Owner"

and will cause the Railroad to advise the Bank that such has been done.

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 the Manufacturer an amount equal to the unpaid purchase price of each Car delivered to and accepted by the Railroad; not later than the twenty-fifth day of any month with respect to Cars shipped from Manufacturer's Plant in the first fifteen days of such month; and not later than the tenth day of the month next following with respect to Cars shipped from Manufacturer's Plant on or after the sixteenth, to and including the last, day of any month; upon receipt by the Bank of the following documents in duplicate, in form and substance satisfactory to it:

- (a) A Bill of Sale from the Manufacturer to the Bank, transferring to the Bank title to each such Car so delivered and warranting said title to be free and clear, as of the time of delivery to the Railroad, of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement and that Manufacturer has not since that time done or omitted to do any act the result of which has impaired the title of the Manufacturer;
- (b) Certificate of Acceptance signed by an authorized representative of the Railroad stating that the Car (or Cars) covered by such Certificate has been delivered and has been inspected and accepted by him on behalf of the Railroad, is in good order and conforms in all respects to the specifications therefor, and further stating that there was plainly, distinctly, permanently and conspicuously placed on each side of each Car at the time of its delivery and acceptance stencil markings bearing words in letters not less than one inch in height:
- "Shawmut Bank of Boston, N.A., Owner, as Assignee of Southern Iron & Equipment Company, Division of U.S. Railway Mfg. Co., Manufacturer and Prior Owner";
- (c) A duplicate of the Manufacturer's invoice covering the Car or Cars so accepted;

provided, however, that the Bank shall not be obligated to make payment to the Manufacturer with respect to any Car if it is not delivered to, and accepted by, the Railroad, prior to June 1, 1976, or such later date as shall be mutually agreed upon by the Bank, Manufacturer and Railroad.

Unless the above specified delivery period shall have been extended by mutual agreement as hereinabove set forth, any Car not delivered and accepted prior to the date specified above shall be excluded from the Conditional Sale Agreement and not included in the term "Cars" in the Conditional Sale Agreement or this Agreement and Assignment. The Manufacturer and the Railroad shall, at the request of the assignee, join in the execution of such supplemental agreement as may be deemed necessary or appropriate to limit the Conditional Sale Agreement to the Cars delivered and accepted thereunder prior to such date.

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

assignment, enjoy all the rights and privileges and be subject to all the obligations of the Bank hereunder.

8. The Manufacturer hereby:

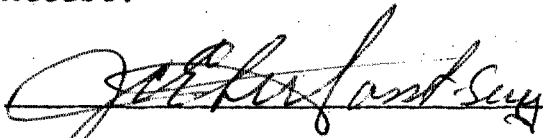
- (a) represents and warrants to the Bank, its successors and assigns, that the Conditional Sale Agreement was lawfully executed for a valid consideration and that it is a valid existing agreement and, according to its terms, binding upon the parties thereto and that said agreement is now in force without amendment thereto; and
- (b) covenants and agrees that it will from time to time and at all times, at the request of the Bank or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises, to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Bank or intended so to be.

9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. The Bank agrees to deliver one of such counterparts, or a certified copy thereof, to the Railroad.

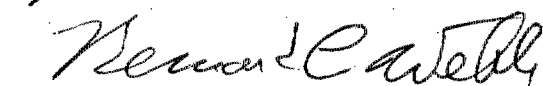
10. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the Manufacturer and the Bank have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed duly attested as of the day and year first above written.

Attest:



Attest:

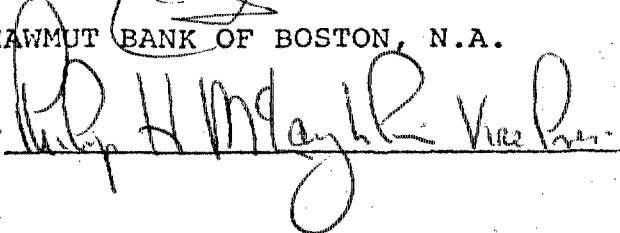
  
SECRETARY

SOUTHERN IRON & EQUIPMENT COMPANY,  
DIVISION OF U.S. RAILWAY MFG. CO.

By

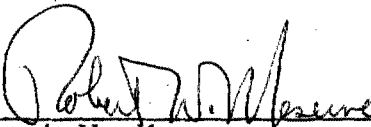
  
SHAWMUT BANK OF BOSTON, N.A.

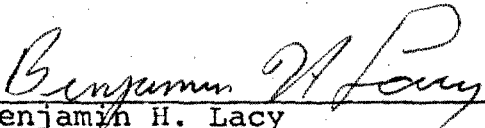
By



The foregoing Agreement and Assignment is acceptable to the undersigned and will be recognized by it.

IN WITNESS WHEREOF, the undersigned has caused its name to be signed and its corporate seal to be hereunto affixed and duly attested by its officers thereunto duly authorized as of the day and year first above written.

  
\_\_\_\_\_  
Robert W. Meserve (Seal))

  
\_\_\_\_\_  
Benjamin H. Lacy (Seal))

) BOTH AS TRUSTEES OF THE PROPERTY  
) OF BOSTON AND MAINE CORPORATION,  
) DEBTOR IN PROCEEDINGS AS FIRST  
) ABOVE SET FORTH, AND NOT IN EITHER  
) CASE INDIVIDUALLY

State of Georgia )  
County of *De Kalb* ) SS.:

I, *Grace C. McNeese*, a notary public, residing in the county and state aforesaid, do hereby certify that *Torn C. Campbell*, who is personally known to me, appeared this day before me personally and did acknowledge that he did sign, seal and deliver the foregoing instrument of his own free will and accord in the name and behalf and as *President* of Southern Iron & Equipment Company, Division of U.S. Railway Mfg. Co., in pursuance of full lawful authority and direction for the purposes therein named and expressed.

In witness whereof, I have hereunto set my hand and official seal, this *3rd* day of *January*, 1976.

*Grace C. McNeese*  
Notary Public

My commission expires , 19

Notary Public, Georgia, State at Large  
My Commission Expires Nov. 26, 1976

Commonwealth of Massachusetts )  
County of Suffolk ) ss.:

I, Robert W. Dubois, a notary public  
hereby certify that Philip H. McLaughlin, Vice President  
of Shawmut Bank of Boston, N.A., personally known to me and so  
known to be such officer, appeared this day before me personally  
and acknowledged that he had signed, sealed, and delivered the  
foregoing instrument for the purposes named and expressed therein  
as his free act and deed as such officer and as the free act and  
deed of said Shawmut Bank of Boston, N.A., being thereunto duly  
authorized.

In witness whereof, I have hereunto set my hand and  
official seal this 6<sup>th</sup> day of January, 1976.

Robert W. Dubois  
Notary Public

My commission expires Aug 7, 1981

Commonwealth of Massachusetts )  
County of Suffolk ) ss.:

I, HARRIET K. MAYCOCK, a Notary Public, hereby certify that Robert W. Meserve and Benjamin H. Lacy, both personally known to me, appeared this day before me personally and respectively acknowledged that they had signed, sealed, and delivered the foregoing instrument for the purposes named and expressed therein as their free act and deed as Trustees of the Property of Boston and Maine Corporation, Debtor in Proceedings for the Reorganization of a Railroad, and not individually, being thereunto duly authorized by order of the United States District Court for the District of Massachusetts entered in the Matter of Boston and Maine Corporation, Debtor, Docket No. 70-250-M in said Court, and not individually.

In witness whereof, I have hereunto set my hand and official seal this 16<sup>th</sup> day of December, 1975.

*Harriet K. Maycock*  
Notary Public

My commission expires 9/15, 1978