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RECORDATION NO. Filed 1425

9841
RECORDATION NO. Filed 1425

NOV 16 1978 - 25 PM
WASHINGTON
NEW YORK
HARRISBURG
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NOV 16 1978 - 25
LOS ANGELES
MIAMI
PARIS
ASSOCIATED OFFICE

RECORDATION NO. 9841 Filed 1425

NOV 16 1978 - 25 PM November 15, 1978

INTERSTATE COMMERCE COMMISSION
Robert L. Oswald, Secretary
Interstate Commerce Commission
12th and Constitution Avenues
Washington, DC 20423

8-320A081
RECORDATION NO. 9841 No. A
Date NOV 15 1978
DM
Fee \$ 1.00
INTERSTATE COMMERCE COMMISSION
ICC Washington, D. C.

Dear Mr. Oswald:

In accordance with Section 20c of the Interstate Commerce Act and the regulations of the Interstate Commerce Commission thereunder the following documents are herewith presented for recordation:

1. Conditional Sale Agreement, dated as of October 31, 1978.

Vendor: Whittaker Corporation
(Berwick Forge and Fabricating Division)
P. O. Box 188
West Ninth Street
Berwick, PA 18603

Purchaser: Hillman Manufacturing Company
P. O. Box 510
Brownsville, PA 15417

Guarantor: Wilmington Securities, Inc.
One Customs House Square
Wilmington, DE 19801

2. Management Agreement (in the nature of a lease or bailment), dated as of October 31, 1978.

Owner (lessor):
(bailor): Hillman Manufacturing Company

Manager (lessee):
(bailee): Detroit and Mackinac Railway Company
120 Oak Street
Tawas City, MI 48763

3. Management Agreement Assignment, dated as of October 31, 1978.

Assignor: Hillman Manufacturing Company

RECEIVED
NOV 15 3 25 PM '78
OPERATION BR.
I.C.C.

Angela M. Oswald
[Handwritten signature]

MORGAN, LEWIS & BOCKIUS

Robert L. Oswald, Secretary

-2-

November 15, 1978

Assignee: The Provident Bank, Cincinnati,
Ohio, as Agent
108 East Fourth Street
Cincinnati, OH 45202

4. Agreement and Assignment, dated as of October 31,
1978.

Assignor: Whittaker Corporation
(Berwick Forge and Fabricating Division)

Assignee: The Provident Bank, Cincinnati,
Ohio, as Agent

A general description of the Equipment covered by these
documents is as follows:

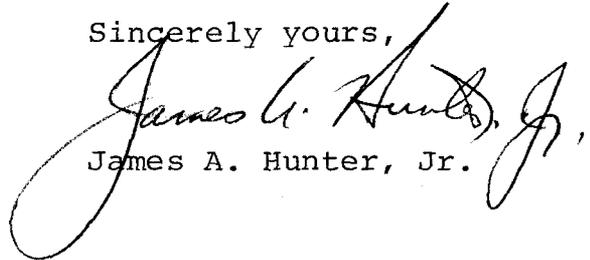
<u>Type</u>	<u>A.A.R. Mechanical Designation</u>	<u>Number of Units</u>	<u>Marked</u>	<u>Numbers Inclusive</u>
70 Ton, 50'-6" General Purpose Boxcars	"XM"	250	Detroit & Mackinac Railway	DM10001- DM10250

Enclosed is our check in payment of the recordation
fee. To the best of my knowledge the enclosed documents have not
previously been filed with the Interstate Commerce Commission.

This firm is acting as special Pennsylvania counsel
for the Vendor in connection with this transaction. After re-
cording a counterpart original of these documents, please return
the remaining copies, stamped with your recordation number, to
the individual bearing this letter and presenting them for
recordation.

Thank you for your assistance.

Sincerely yours,


James A. Hunter, Jr.

JAH/ap

Enclosures

Interstate Commerce Commission
Washington, D.C. 20423

11/16/78

OFFICE OF THE SECRETARY

James A. Hunter, Jr.
Morgan, Lewis & Bockius
123 South Broad Street
Phila. Pa. 19109

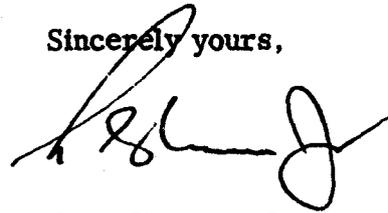
Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on at
11/16/78 3:25pm
and assigned recordation number(s)

9841, 9841-A, 9841-B, 9841-C

Sincerely yours,



H.G. Homme, Jr.,
Secretary

Enclosure(s)

SE-30-T
(2/78)

9841

RECORDATION NO. Filed 1425

— MANUALLY EXECUTED COPY —

NOV 16 1978 - 3 25 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

DATED AS OF OCTOBER 31, 1978

AMONG

WHITTAKER CORPORATION
BERWICK FORGE AND FABRICATING DIVISION
BUILDER

HILLMAN MANUFACTURING COMPANY
VENDEE

AND

WILMINGTON SECURITIES, INC.,
GUARANTOR

(COVERING UP TO 250 GENERAL PURPOSE BOXCARS)

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on November _____, 1978 at _____, Recordation No. _____.

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*This Index is included for convenience only and does not form a part of, or affect any construction or interpretation of this instrument.

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CONDITIONAL SALE AGREEMENT dated as of October 31, 1978 among WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION), a California corporation (hereinafter, subject to the provisions of Article 1, called the "Vendor" or "Builder" as more particularly set forth in Article 1 hereof), HILLMAN MANUFACTURING COMPANY, a Pennsylvania corporation (hereinafter called the "Vendee"), and WILMINGTON SECURITIES, INC., a Delaware corporation (hereinafter called "Guarantor").

WHEREAS, the Builder will construct, sell and deliver to the Vendee, and the Vendee will purchase, the railroad equipment described in the Annex A hereto (hereinafter called collectively the "Equipment" or "Units" and individually a "Unit") which Equipment shall be constructed in accordance with the specifications referred to in certain letter agreements between OPERATING LEASE SERVICES, INC., a Connecticut corporation, and the Builder, dated June 16, 1978, and June 22, 1978, respectively, the terms of which letter agreements and specifications attached thereto are included herein by this reference thereto; and

WHEREAS, the Vendee, prior to or simultaneously with the execution of this Agreement, will enter into a management agreement dated as of the date hereof (hereinafter called the "Management Agreement") with Detroit & Mackinac Railway Company (hereinafter called "Manager") in substantially the form of Annex B hereto.

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

ARTICLE 1. Assignment; Definition; Additional Agreements. The parties hereto contemplate that the Vendee will furnish that portion of the purchase price for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of said purchase price shall be paid to the Builder (or with respect to not more than \$200,000, to such other entity as the Vendee shall request pursuant to the provision of the first sentence of Article 20 of this Agreement) by an assignee of the Builder's right, title, and interest under this Agreement pursuant to an Agreement and Assignment (hereinafter called the "Assignment") between the Builder and The Provident Bank, Cincinnati, Ohio (hereinafter sometimes referred to as "Agent"), as Agent under a Finance Agreement dated as of the date hereof.

In case of such assignment, the Vendee will assign to the Agent, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title and interest of the Vendee in and to the Management Agreement and in and to any subsequent agreement or lease affecting the Equipment pursuant to a Management Agreement Assignment in substantially the form of Annex C hereto.

Notwithstanding any other provision contained herein, in the event that on any Closing Date (as hereinafter defined) the Builder does not receive from the Vendee and the Agent pursuant to this Agreement and the Assignment, in cash, the aggregate amount of the Invoiced Purchase Price (as hereinafter defined) for all Units for which settlement is then being made, then such Units as to which the aggregate Invoiced Purchase Price is not received in cash by the Builder shall be excluded herefrom. If any Unit shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Units not so excluded herefrom.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties in business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder" whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. For all purposes of Article 20 hereof, the term "Vendor" shall mean such assignee or assignees.

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

ARTICLE 3. Inspection and Delivery. The Builder will deliver the Units of the Equipment to the Vendee during the delivery period specified in Annex A hereto at the Builder's Berwick, Pennsylvania plant, freight charges, if any, prepaid; provided, however, that delivery of any Unit of the Equipment shall not be made until this Agreement has been filed and recorded with the ICC in accordance with Section 20c of the Interstate Commerce Act; provided, further, that the Builder shall have no obligation to deliver any Unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clause (d) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities, and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of

the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of the sample Unit and each Unit of the Equipment, such Unit or Units shall be presented to an authorized inspector of the Vendee (who may be an employee of the Manager) for inspection at the place specified for delivery of such Unit or Units, and if each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee shall execute and deliver to the Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance") stating that such Unit or Units have been delivered, inspected and accepted on behalf of the Vendee on the date indicated in such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and are marked in accordance with Article 9 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

On delivery and acceptance of each such Unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

ARTICLE 4. Purchase Price and Payment. The base price or prices per Unit of the Equipment are set forth in Annex A hereto. Such base price or prices may be increased as is agreed to by the Builder and the Vendee. The term "Invoiced Purchase Price" as used herein shall mean that base price or prices as set forth in Annex A as so increased.

The Equipment shall be settled for in two groups of Units, the first of which shall provide for the first one hundred twenty-five (125) Units of the Equipment delivered to and accepted by the Vendee (or if less than one hundred twenty-five (125) Units are delivered and accepted by March 31, 1979, then such lesser number of Units as are delivered and accepted by such date), and the second of which shall provide for the remaining Units delivered to and accepted by the Vendee prior to March 31, 1979. The term "Closing Date" with respect to any Group shall mean such date not later than March 31, 1979, (hereinafter called the "Cut-Off Date") as shall be fixed by the Vendee by written notice delivered to the Builder, and the Vendor at least five

business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and any other day on which banking institutions in Cincinnati, Ohio are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Invoiced Purchase Price plus up to \$200,000 of out-of-pocket expenses actually incurred by Vendor pursuant to Article 20 hereof (such amount of expenses plus the Invoiced Purchase Price being hereinafter called the "Purchase Price") of the Equipment, as follows:

(a) On the Closing Date with respect to each Group an amount equal to the greater of 20% of the Invoiced Purchase Price of such Units or the amount by which the Invoiced Purchase Price for such Units exceeds \$27,200 per Unit.

(b) In Sixty-Three (63) consecutive quarterly installments as hereinafter provided the amount of the Purchase Price not paid pursuant to Clause (a) above, together with interest thereon as set forth below.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the "Conditional Sale Indebtedness") shall be payable together with interest from the first Closing Date as hereinafter set forth as follows: on June 30, 1979, Vendee shall pay an amount equal to the sum of (i) interest at the rate set forth below accrued on the total Conditional Sale Indebtedness from and including the first Closing Date to and including March 31, 1979 (such amount being hereinafter called "Interim Interest" and being calculated as if the entire Conditional Sale Indebtedness was incurred on the first Closing Date), (ii) interest at the rate set forth below on the Interim Interest from March 31, 1979 to and including June 30, 1979, and (iii) an amount equal to 3.357866% of the Conditional Sale Indebtedness which amount shall be applied first to interest accrued on the Conditional Sale Indebtedness at the rate set forth below from March 31, 1979 to and including June 30, 1979, and then to reduce the principal amount of such Conditional Sale Indebtedness; and thereafter, Vendee shall pay on each September 30, December 31, March 30 and June 30, to and including December 31, 1994, equal payments of Conditional Sale Indebtedness principal and interest, with interest payable quarterly in arrears, each such payment to be an amount equal to 3.357866% of the Conditional Sale Indebtedness which amount is calculated so as to repay all principal and interest due and owing upon the last such quarterly payment. Conditional Sale Indebtedness

shall bear interest at the rate of 11% per annum from the first Closing Date. The installments due under subparagraph (b) of the preceding paragraph shall completely amortize the Conditional Sale Indebtedness and all interest with respect to such indebtedness.

The Vendee will furnish to the Vendor promptly after the Cut-Off Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the aggregate respective amounts of principal and interest payable in installments.

As additional security for the payments due under this Agreement, Vendee hereby assigns to Vendor, all receipts, revenues, earnings, deposits, or other payments of whatever kind or nature, due and owing to the Vendee generated by the Equipment; and all payments to the Manager or any other manager or user of the Equipment from Vendee shall be subordinated to Vendor's payments under this Agreement.

Interest under this Agreement shall be determined on the basis of a 360-day year composed of twelve (12) 30-day months, with periods of less than a full calendar month being calculated on the basis of actual days elapsed.

The Vendee will pay interest, to the extent legally enforceable, at the rate of Four Percent (4%) per annum in excess of the interest rate then payable on the Conditional Sale Indebtedness upon all payments remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof and in the next succeeding paragraph, the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

Vendee shall have the right to prepay the Conditional Sale Indebtedness in whole at any time or from time to time in part, provided, however, that each partial prepayment shall be in the principal amount of at least One Hundred Thousand Dollars (\$100,000) or an integral multiple thereof, and further provided, that until the eleventh anniversary of the first Closing Date, Vendee shall pay a prepayment premium at 11% of the principal amount so prepaid, which prepayment premium shall be reduced by 1% each year commencing on the first anniversary of the first Closing Date; provided, however, that in the event the Management Agreement is terminated by the Vendee pursuant

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to Section 7 thereof, the prepayment premium hereunder shall be reduced by Fifty Percent (50%) of the amount of premium otherwise payable. (By way of example and not in limitation of the preceding sentence, if a prepayment of Conditional Sale Indebtedness is made between the first and second anniversaries of the first Closing Date and the Management Agreement has not been terminated pursuant to Section 7 thereof, the prepayment premium shall be 10% of the amount so prepaid; and if a prepayment is made between the tenth and eleventh anniversary of the first Closing Date and the Management Agreement has not been terminated pursuant to Section 7 thereof, the prepayment premium shall be 1% of the amount so prepaid.) All prepayments made pursuant to the provisions of this paragraph shall be applied to prepay ratably, in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in this Article 4 hereof.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 6 and 7 hereof), it is understood and agreed by the Vendor that the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "Income and Proceeds from the Equipment" (as hereinafter defined in this Article 4); provided, however, that the failure to make any such payment shall nonetheless constitute an event of default under Article 15 hereof. As used herein the term "Income and Proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (a) all amounts paid by the Manager to the Vendee under the Management Agreement, amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Management Agreement and any and all other payments received by the Vendee under any provision of the Management Agreement, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposi-

tion thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon then due and payable or becoming due and payable within Ninety (90) days of the date such amounts described in the foregoing clauses (a) and (b) are paid pursuant to the Management Agreement or as shall equal any other payments then due and payable under this Agreement; it being understood that "Income and Proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee or any assignee of the Vendee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon then due and payable or becoming due and payable within Ninety (90) days of the date on which such amounts are received by the Vendee or any assignee of the Vendee. Notwithstanding anything to the contrary contained in Article 6 or 7 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder, and the foregoing sentence shall evidence a release of claims solely against the Vendee and not any other entities which may be liable to the Vendor for such claims.

The preceding paragraph notwithstanding, the Vendee shall have the right, but not the obligation, at any time and from time to time to irrevocably assume in its individual capacity all or any portion of the Conditional Sale Indebtedness or other obligations hereunder, in which event the Vendor and any party claiming by, through or under the Vendor will be entitled to look directly to the Vendee for payment of the indebtedness and performance of the other obligations so assumed. Any assumption pursuant to this paragraph shall be evidenced by a writing delivered by the Vendee to the Vendor.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to and a security

interest in the Equipment until the Vendee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee or the Manager as provided in this Agreement and the Management Agreement. Any and all additions to the Equipment and any and all parts installed on and additions and replacements made to any Unit of the Equipment shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and shall be included in the term "Equipment" as used in this Agreement. (All such security title to security interest in the Equipment hereinabove retained by the Vendor and any such accessions are hereinafter called collectively, the "Security Title".)

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the Vendee's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, at the expense of the Vendee will (a) execute a bill or bills of sale for the Equipment transferring its Security Title thereto and property therein to the Vendee, or upon its order, free of all liens, security interests, and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording, or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than income taxes, gross receipts taxes except gross receipts taxes in the nature of or in lieu of sales, use or rental taxes, franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Vendee assumes and agrees to pay on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of Vendor's ownership of Security Title thereto and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property, or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement.

ARTICLE 7. Maintenance, Casualty Occurrences, Insurance. The Vendee will at all times and at its own expense, maintain and keep the Equipment or cause the Equipment to be maintained and kept, in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. The Vendee shall supply all parts, services and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and shall constitute accessions to the Equipment subject to all the terms and conditions of this Agreement.

In the event that any Unit of the Equipment shall be or become worn out, lost, stolen, destroyed, irreparably damaged, from any cause whatsoever, taken or requisitioned

by condemnation or otherwise, or there shall occur any other material interruption or termination of use of any Unit regardless of the cause (such occurrences being herein called "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, cause the Vendor to be fully notified in regard thereto and immediately thereafter Vendee shall pay to Vendor a sum equal to the aggregate Casualty Value (as hereinafter defined) of such Unit as of the date of such payment. Concurrently with each payment of Casualty Value pursuant to this Article 7, the Vendee shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of each Unit as to which such payment is being made. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay without penalty or premium, ratably in accordance with the unpaid balance of each installment, the Conditional Sale Indebtedness and the Vendee will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and interest in such Unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee, at the expense of the Vendee and without liability to the Vendor, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Casualty Value of each Unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price attributable to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of the Equipment.

Any condemnation payments or insurance proceeds received by the Vendor in respect of Units suffering a Casualty Occurrence shall be deducted from the amounts payable by the

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Vendee to the Vendor in respect of Casualty Occurrences pursuant to the second paragraph of this Article. If the Vendor shall receive any condemnation payments or insurance proceeds in respect of such Units suffering a Casualty Occurrence after the Vendee shall have made payments pursuant to this Article without deduction for such condemnation payments or insurance proceeds, the Vendor shall pay such condemnation payments or insurance proceeds to the Vendee provided that no event of default shall have occurred and be continuing hereunder. All insurance proceeds received by the Vendor in respect of any Unit or Units of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon proof satisfactory to the Vendor that any damages to such Unit in respect of which such proceeds were paid has been fully repaired.

The Vendee shall cause to be procured, maintained and paid for with insurers acceptable to Vendor, insurance in an amount at all times at least equal to the Casualty Value of the Units of Equipment then subject to this Agreement, insuring against loss and destruction of, and damage to, each such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged by Vendee.

The Vendee shall further maintain or cause to be maintained with reputable insurers acceptable to the Vendor public liability and property damage insurance with respect to the Equipment in amounts not less than the greater of (a) the amounts of insurance maintained by the Vendee with respect to railroad equipment of a similar kind as the Equipment owned or leased by the Vendee, or (b) bodily injury and property damage liability insurance in an amount not less than (x) \$1,000,000 with respect to personal injury to, or the death of, any one person, (y) \$5,000,000 with respect to personal injury to or the death of any number of persons arising out of one accident or occurrence and (z) \$2,500,000 for property damage with a maximum self insurance retention or deductible of \$100,000. Each liability insurance policy shall be primary without right of contribution from any other insurance which is carried by the Vendor and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

The Vendee warrants that the foregoing insurance coverage shall be in effect at the execution of this Agreement. Such insurance shall (i) name the Vendor and any other holder

of a security interest in the Units of Equipment as insureds or additional insureds in addition to the Vendor and the Manager with losses to be payable to all such entities as their interests may appear, (ii) provide that the policies will not be invalidated as against the Vendor or any holder of a security interest in the Units of Equipment because of any violation of a condition or warranty of the policy or application thereof by the Vendee, and (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Vendor and any holder of a security interest in the Equipment.

ARTICLE 8. Reports and Inspections. On or before March 31 in each year, commencing with the year 1980, the Vendee shall cause to be furnished to the Vendor an accurate statement: (a) setting forth as of the preceding December 31 (i) the amount, description and numbers of all Units of the Equipment then subject to this Agreement, (ii) the amount, description and numbers of all Units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such statement), and (iii) the dollar amount spent in the maintenance and repair of each Unit during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request; and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Vendee's and any assignee of Vendee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

Vendee shall also furnish, or cause to be furnished to Vendor on or before April 30 in each year during the term of the Agreement, commencing with the year 1979, audited Financial Statements prepared in accordance with generally accepted accounting principles consistently applied of Vendee, the Manager, and any other party which shall replace the Manager as manager of the Equipment or as lessee of the Equipment under a lease providing for use of the Equipment by such lessee for a period of not less than one (1) year.

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The Vendee shall prepare and deliver to the Vendor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Vendor) all reports (other than income tax returns), if any, relating to maintenance, registration and operation of the Equipment required to be filed by the Vendor with any federal, state or other regulatory agency by reason of the ownership by the Vendor of Security Title to the Equipment or the provisions hereof.

ARTICLE 9. Marking of Equipment. The Vendee will cause each Unit of the Equipment to be kept numbered with the identifying number of the Manager set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c--THE PROVIDENT BANK, CINCINNATI, OHIO, AGENT, SECURITY OWNER" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Vendee will not permit any such Unit to be placed in operation or exercise any control or dominion over the same until such numbers and markings shall have been made thereon and will replace or will cause to be replaced promptly any such numbers and markings which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any Unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Vendee and/or the Manager or their respective affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause the Manager and every manager or user of the Equipment to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment)

with all laws of the jurisdictions in which its or such manager's or user's operations involving the Equipment may extend, with the interchange rules of the AAR and with all lawful rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws or rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Possession and Use. The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may contract with the Manager for the maintenance, use and management of the Equipment as provided in the Management Agreement, but the rights of the Manager shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Vendee hereby agrees that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Management Agreement until the Vendor shall have received notice in writing of the intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summons, writs, processes and other documents served by it upon the Manager or served by the Manager upon it in connection therewith. The Management Agreement shall not be amended or modified by the Vendee without the prior written consent of the Vendor; which consent shall not be unreasonably withheld.

So long as an event of default shall not have occurred and be continuing under this Agreement, the Equipment may, on and subject to all the terms and conditions of this Agreement, be used (i) upon the lines of railroad owned or operated by the Manager or its affiliates (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Manager or any such affiliate has trackage or other operating rights or over which railroad equipment of the Manager or any such affiliate is regularly

operated pursuant to contract and (ii) upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements; provided, however, that the Vendee shall not assign or permit the assignment of any Unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America; and provided, further, that at no time shall more than ten percent (10%) of the Units be outside the United States of America. The Vendee may also lease the Equipment to any company incorporated in any state in the United States or in the District of Columbia with the prior written consent of the Vendor, which consent shall not be unreasonably withheld; provided, that the rights of such lessee are made expressly subordinate and junior to the rights and remedies of the Vendor under this Agreement. A copy of such lease shall be furnished to the Vendor.

ARTICLE 12. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or their successors or assigns which, if unpaid, might become a lien, charge, or security interest on or with respect to the Equipment, or any Unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

This covenant will not be deemed breached by reason of liens for taxes, assessments, or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the next to the last paragraph of Article 4 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the Income and Proceeds from the Equipment), equal or superior to the

Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any Unit thereof, or the Vendee's interest in the Management Agreement and the payments to be made thereunder, but the Vendee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Management Agreement and the payments to be made thereunder.

ARTICLE 13. Indemnities and Warranties. The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims, and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage, or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims, and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any Unit of or all the Equipment.

Builder warrants to the Vendee that each Unit will be built in accordance with the Specifications and that each Unit delivered will be free under normal use and service from (i) all defects in material and workmanship (except as to items

specified by Vendee and not manufactured by Builder or except items furnished or supplied by Vendee); and (ii) all defects in design (other than designs furnished by Vendee). Builder's obligations under this warranty shall be limited to repairing or replacing any part or parts of any of the Units which shall within one (1) year after delivery of any such Unit be returned to the Builder's manufacturing plant or delivered to such other repair facilities as Builder may designate with transportation charges prepaid and which part or parts the Builder shall be reasonably satisfied, upon Builder's examination, are defective or were not in conformity with the applicable specifications when shipped; provided, that Vendee notifies Builder in writing promptly, after discovery of such defect, and before delivery of such Unit.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND BUILDER SHALL NOT BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES RESULTING FROM ANY FAILURE TO MEET THE AFOREMENTIONED WARRANTY.

The Builder agrees that on the Closing Date for each group it will warrant to the Vendee that at the time of delivery of each Unit of the Equipment purchased in such Group, the Builder had at such time legal title to such Unit, it was at such time free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee hereunder and the rights of the Manager under the Management Agreement and that no Unit was delivered to or used by the Manager or any other person unless it was first duly subjected to this Agreement, and the Builder further agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such Unit by the Builder hereunder; all subject, however, to the other provisions hereof and the rights of the Vendee and the Manager hereunder. The Builder will not deliver any of the Units to the Vendee hereunder until this Conditional Sale Agreement, the Assignment, the Management Agreement and the Management Agreement Assignment have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from counsel for the Agent or from counsel for the Manager that such filing and recordation have occurred).

Except in cases of articles or materials specified by the Vendee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee and not developed or purported to be developed by the Builder, the Builder agrees, except as

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otherwise specifically provided in this Conditional Sale Agreement, to indemnify, protect and hold harmless the Vendee and the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendee, the Agent or their assignees because of the use in or about the construction of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Vendee, the agent or their assignees will give prompt notice to the Builder of any such liability or claim actually known to such party and will give such Builder the right, at such Builder's expense, to compromise, settle or defend against such claim.

In case in any action in which the Builder has a duty to indemnify any party under the preceding paragraph of this Agreement, the use of the Units, or part thereof, is enjoined, the Builder shall, at its option and at its own expense, either procure for the Vendee the right to continue using the Units or part, or replace same with non-infringing equipment or part, or modify it so it becomes non-infringing, or remove the infringing equipment or infringing part and refund the Purchase Price for such infringing equipment or infringing part and the transportation and installation costs thereof.

The foregoing states the entire liability of the Builder for patent infringement by said Units or any part thereof.

The Builder hereby:

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

(b) agrees that it will from time to time and at all times, at the request of the Vendee 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 Vendee or intended so to be; and

(c) agrees that, upon request of the Vendee, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record this Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Units upon payment in full to the Builder.

ARTICLE 14. Assignments. The Vendee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any Unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer, or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee) and (ii) provides that the Vendee shall remain liable for all the obligations of the Vendee under this Agreement. Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without its vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits, and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained herein which, according to its terms or context, is intended to survive an assignment.

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

The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor

hereunder, is contemplated. THE VENDEE EXPRESSLY REPRESENTS, FOR THE PURPOSE OF ASSURANCE TO ANY PERSON, FIRM OR CORPORATION CONSIDERING THE ACQUISITION OF THIS AGREEMENT OR OF ALL OR ANY OF THE RIGHTS OF THE VENDOR HEREUNDER, AND FOR THE PURPOSE OF INDUCING SUCH ACQUISITION, THAT IN THE EVENT OF SUCH ASSIGNMENT BY THE VENDOR AS HEREINBEFORE PROVIDED, THE RIGHTS OF SUCH ASSIGNEE TO THE ENTIRE UNPAID INDEBTEDNESS IN RESPECT OF THE PURCHASE PRICE OF THE EQUIPMENT OR SUCH PART THEREOF AS MAY BE ASSIGNED, TOGETHER WITH INTEREST THEREON, AS WELL AS ANY OTHER RIGHTS HEREUNDER WHICH MAY BE SO ASSIGNED, SHALL NOT BE SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM, OR RECOUPMENT WHATSOEVER ARISING OUT OF ANY BREACH OF ANY OBLIGATION OF THE BUILDER WITH RESPECT TO THE EQUIPMENT OR THE MANUFACTURE, CONSTRUCTION, DELIVERY OR WARRANTY THEREOF, OR WITH RESPECT TO ANY INDEMNITY HEREIN CONTAINED, NOR SUBJECT TO ANY DEFENSE, SETOFF, COUNTERCLAIM OR RECOUPMENT WHATSOEVER ARISING BY REASON OF ANY OTHER INDEBTEDNESS OR LIABILITY AT ANY TIME OWING TO THE VENDEE BY THE BUILDER. ANY AND ALL SUCH OBLIGATIONS HOWSOEVER ARISING, SHALL BE AND REMAIN ENFORCEABLE BY THE VENDEE AGAINST AND ONLY AGAINST THE BUILDER.

In the event of any such assignment or successive assignments by the Vendor, the Vendee will, upon request by the assignee, change, or cause to be changed, the markings on each side of each Unit of the Equipment so as to be consistent with the interest of such assignee in the Equipment, to the extent necessary to conform to any requirements of the laws of the jurisdictions in which the Equipment shall be operated. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Vendee in the case of the first such assignment requiring a change or addition to the markings on each Unit specified in Article 9 hereof, and, in the case of such subsequent assignments, if any, or in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Vendee will (a) in connection with each group of Equipment for which settlement is to be made, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

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(a) the Vendee shall fail to pay in full any indebtedness in respect of the Purchase Price or any other sum payable by the Vendee as provided in this Agreement within fifteen (15) days after payment thereof shall be due hereunder; or

(b) the Guarantor shall fail to pay in full any sum payable by it as provided in this Agreement within fifteen (15) days after payment thereof shall be due hereunder; or

(c) the Vendee or Guarantor shall, for more than thirty (30) days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(d) any proceeding shall be commenced by or against the Vendee or the Guarantor for any relief which includes, or might result in, any modification of the obligations of the Vendee or the Guarantor hereunder under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments or indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit the readjustment of the obligations of the Vendee or the Guarantor under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Vendee and the Guarantor under this Agreement shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Guarantor or for their respective property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(e) the Vendee shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment and this Agreement or any interest therein or on any Unit of Equipment, as the case may be, shall not be reassigned or retransferred within thirty (30) days of written notice from the Vendor to do so; or

(f) an Event of Default shall have occurred under the Management Agreement entered into by Vendee with respect to the Equipment and be continuing for thirty (30) days without the Vendee having terminated the Management Agreement pursuant to the terms thereof and entered into a new management agreement or lease or otherwise provided for the use of the Equipment by a manager, lessee or other user acceptable to the Vendor in its sole and absolute discretion, upon terms acceptable to the Vendor in its sole and absolute discretion;

then at any time after the occurrence of such an event of default and so long as such event shall be continuing the Vendor may, upon written notice to the Vendee and the Manager, upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, and subject to the provisions of the last paragraph of Article 16 hereof, (i) cause the Management Agreement and any other agreement with respect to the Equipment, or any Unit or Units thereof, then in effect immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Vendee, subject to Article 4 hereof, wherever situated. The Vendee and the Guarantor shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

Until a Declaration of Default shall have continued for thirty (30) days, the Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Management Agreement or any such other agreement by notice to the Vendee and the Manager in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Management Agreement or any such other agreement had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the

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Vendee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16. Remedies. Upon the giving of written notice of a Declaration of Default by the Vendor to the Vendee and the Manager at the addresses provided in Article 22 hereof, the Vendor shall be entitled to and shall be deemed for all purposes to have elected to repossess and retain the Equipment in satisfaction of the Vendee's obligation to pay the entire indebtedness in respect of the Purchase Price of the Equipment (but without affecting the Guarantor's obligations set forth in Article 17 hereof), and after passage of the thirty (30) day period set forth in the proviso below, all Vendee's right to possession of, title to and interest in the Equipment shall terminate, all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment, and the Vendor shall make such disposition of the Equipment exclusively for its own account as the Vendor, in its sole discretion, shall deem fit; provided, however, that if within thirty (30) days from such notice of a Declaration of Default, the Vendee pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee and such Declaration of Default shall no longer be deemed continuing.

To the full extent permitted by applicable law, the Vendee hereby (i) consents to the repossession and retention of the Equipment by the Vendor in satisfaction of the unpaid indebtedness in respect of the Purchase Price of the Equipment upon a Declaration of Default as aforesaid, (ii) waives all rights, if any, which it may have to object to such repossession and retention of the Equipment in the manner aforesaid or to require the sale, lease or other dispossession of the Equipment by the Vendor, and (iii) releases all its rights and interest, if any, to and in the proceeds realized by Vendor from disposition of the Equipment subsequent to any such repossession, including without limitation, proceeds in excess of the unpaid indebtedness in respect of the Purchase Price of the Equipment.

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Upon the Vendor giving notice of a Declaration of Default, demanding possession of the Equipment pursuant to this Agreement, and designating a reasonable location or locations on the lines or premises of the Manager or point or points at which the lines of any other railroad interconnect with Manager's lines for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk, forthwith and in the usual manner, (a) cause the Equipment to be moved and assembled at such location on Manager's lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor, (b) cause the Equipment to be moved to such interchange point or points as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor, and (c) remit to Vendor promptly upon receipt thereof, any and all income earned and received for use of any Unit in connection with such movement of the Equipment, including all income from users pursuant to the AAR Car Hire Rate Table (hereinafter "Gross Revenues") during such movement, and the Vendee shall use its best efforts to realize such Gross Revenues on such Units during such movement. The Vendee shall obtain for the Vendor from the Manager the right to elect, at the option of the Vendor, to keep the Equipment on any of the lines or premises of the Manager until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Vendee agrees to cause the Manager to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Manager, and to permit inspection of the Equipment by any prospective purchaser or lessee of the Equipment; provided such storage without rent shall not exceed a period of sixty (60) days from the date the Vendee makes the Equipment available to the Vendor and if so requested by the Vendor, the Vendee shall, or shall cause the Manager, without expense to Vendor, to obliterate any insignia or other identifying markings or lettering theretofore placed on the Equipment and shall restore the exterior of the Equipment to its original appearance, ordinary wear and tear otherwise permitted under the Management Agreement being excepted. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence to the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default and after the passage of the thirty (30) day period

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set forth in the proviso contained in the first paragraph of this Article 16, the Vendor, in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, may take or cause to be taken, by its agent or agents, immediate physical possession of the Equipment, or one or more of the Units thereof, without liability to return to the Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee or any other person and for such purpose may enter upon any premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Manager with or without process of law. Without in any way limiting the obligations of the Vendee under the foregoing provisions of this Article 16, the Vendee hereby appoints the Vendor as agent and attorney of the Vendee, with full power and authority, including the power of substitution, at any time while the Vendee is obligated to deliver possession of any Unit to the Vendor, to demand and take possession of such Unit in the name and on behalf of the Vendee from whomsoever shall be in possession of such Unit at the time.

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

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Subject to the provisions set forth in the next to last paragraph of Article 4 of this Agreement, the Vendee will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including reasonable attorneys' fees, and the amount thereof shall be included in such judgment.

Except as herein agreed to the contrary, the foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

Vendor agrees for the benefit of the Manager, as a third party beneficiary hereto, that if

(i) all Vendee's right, title and interest in and to the Equipment shall have terminated pursuant to this Article 16 following a Declaration of Default hereunder, and

(ii) Vendor shall have received from the Manager during the thirty (30) day period following the giving of notice by Vendor of such Declaration of Default, Manager's irrevocable offer to purchase the Equipment upon termination of Vendor's right, title and interest therein as hereinafter provided,

then promptly upon the expiration of such thirty (30) day period, Vendor shall notify the Manager of Vendor's election either

(a) to accept Manager's offer to purchase the Equipment or

(b) to reject such offer to purchase the Equipment but to assume the Vendee's obligations under the Management Agreement as of the date on which Vendee's right, title and interest in and to the Equipment terminated.

If after receipt by the Vendor of the Manager's offer to purchase the Equipment pursuant to the preceding sentence but prior to the expiration of the thirty (30) day period following Vendor's giving of notice of such Declaration of Default, the Vendor rescinds the Declaration of Default for any reason or the Vendee pays or causes to be paid to the

Vendor the total unpaid balance of indebtedness in respect of the Purchase Price of the Equipment together with all other sums then due in accordance with the proviso set forth in the first paragraph of this Article 16, then all Vendor's right, title and interest in and to the Equipment shall pass to and vest in the Vendee and the Manager's offer to purchase shall be null, void and of no effect. If both of the conditions set forth in clauses (i) and (ii) of the first sentence of this paragraph occur and the Vendor elects under clause (b) of such sentence to assume the Vendee's obligations under the Management Agreement, the Manager's offer to purchase shall be null, void and of no effect. If both of the conditions set forth in clauses (i) and (ii) of the first sentence of this paragraph occur and the Vendor elects under clause (a) of such sentence to accept the Manager's offer to purchase the Equipment, the Manager promptly shall set a closing date for the purchase of the Equipment, which shall be no more than thirty (30) days subsequent to the date on which the Vendor gives the Manager notice of Vendor's acceptance of Manager's offer to purchase. On such closing date, the Manager shall pay to the Vendor in cash the total unpaid balance of indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due Vendor under this Agreement, at which time Vendor shall transfer to the Manager all its right to the possession of, title to and property in the Equipment. If all Vendee's right, title and interest in and to the Equipment shall have terminated pursuant to this Article 16 following a Declaration of Default hereunder but the Vendor shall not have received Manager's irrevocable offer to purchase the Equipment pursuant to the first sentence of this paragraph, then the Vendor promptly shall advise the Manager of Vendor's election either

(x) to assume all Manager's obligations under the Management Agreement as of the date on which Vendee's right, title and interest in and to the Equipment terminated under Article 16 of this Agreement and continue such Management Agreement according to its terms, or

(y) to terminate such Management Agreement, as of the date on which Vendee's right, title and interest in and to the Equipment terminated under Article 16 of this Agreement.

ARTICLE 17. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor by endorsement (through its execution hereof) the due and punctual performance and observance of all obligations of the Vendee under Article 7 hereof with respect to maintenance of the Equipment.

The Guarantor further agrees as follows:

(a) Promptly upon the occurrence of a Declaration of Default and if the Vendee fails to pay to the Vendor within thirty (30) days of the date of such Declaration of Default the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment together with interest thereon accrued and unpaid and all other payments due under this Agreement, then, the Guarantor shall pay to the Vendor for all Units then subject to this Conditional Sale Agreement as liquidated damages and not as a penalty, an amount equal to the "Aggregate Maintenance Guaranty", as of the date of such payment, calculated as hereinafter provided, minus the actual maintenance expenses incurred by the Vendee prior to such Declaration of Default for maintaining such Units, whether arising under the Management Agreement or otherwise. The payment to be made hereunder by Guarantor to the Vendor is in addition to, and not in lieu of, any remedy which the Vendor may have against Vendee pursuant to any other provision of this Agreement.

The Aggregate Maintenance Guaranty for each Unit shall be the sum of the "Annual Maintenance Guaranties" for such Unit for each year or portion thereof during which such Unit is subject to this Agreement, calculated as herein set forth. The Annual Maintenance Guaranty for a Unit shall be calculated as of the last day of each calendar year or part thereof during which such Unit is subject to this Agreement and shall be the product of the (a) "Average Annual Mileage" (as hereinafter defined) of such Unit during such year, multiplied by (b) the fraction of such year in which such Unit was subject to this Agreement, multiplied by (c) the "Mileage Factor" (as hereinafter defined) for such year. The "Average Annual Mileage" of a Unit shall be calculated by dividing the total mileage traveled by such Unit since its acceptance hereunder, by the number of years or part thereof elapsed from the date of its acceptance hereunder until the date as of which the Aggregate Maintenance Guaranty is calculated.

The Mileage Factor for the year 1978 shall be \$.0250, and the Mileage Factor such each subsequent year shall be \$.0250 compounded on an annual basis by the "Inflation Factor" which shall mean the amount expressed as a percentage which, if used to compound on an annual basis the original

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Average Annual Mileage = $\frac{100,000 \text{ miles}}{6-7/12 \text{ years}}$ = 13,187 miles

Inflation Factor = 9.9919%

<u>Date</u>	<u>Mileage Factor</u>	<u>Fraction of Year Unit Subject to Agreement</u>	<u>Average Annual Mileage</u>	<u>Annual Maintenance Guaranty</u>
12/31/78	\$.025000	1/12	13,187	\$ 27.47
12/31/79	.027498	1	13,187	362.61
12/31/80	.030246	1	13,187	398.84
12/31/81	.033268	1	13,187	438.70
12/31/82	.036592	1	13,187	482.54
12/31/83	.040248	1	13,187	530.75
12/31/84	.044269	1	13,187	583.78
6/31/85	.046465	1/2	13,187	<u>306.39</u>

Aggregate Maintenance Guaranty at 6/31/85

\$3,131.09)

(b) On or before April 30 of each year, commencing with April 30, 1979, Guarantor shall furnish to Vendor its financial statements for the period ending December 31 of the preceding year which financial statements shall be certified by Guarantor's Certified Public Accountant or such other certified public accountant as shall be acceptable to Vendor. In the event such certified financial statements of the Guarantor fail to indicate a net worth of Guarantor as determined under generally accepted accounting principles of at least \$10,000,000, Guarantor promptly shall pay to Vendor, to be held in escrow as security for its obligations hereunder, the maximum amount which would then be due and payable under paragraph (a) of this Article 17 if a Declaration of Default had occurred as provided herein, such escrowed amount to be adjusted annually so long as the net worth of Guarantor is less than \$10,000,000 so that the amount escrowed hereunder after each such adjustment shall be equal to the amount which would be payable on the date of such adjustment under paragraph (a) of this Article 17 if a Declaration of Default had occurred as provided herein, and such escrowed amount shall be refunded to Guarantor upon evidence reasonably satisfactory to Vendor that Guarantor's Net Worth, determined as above, exceeds \$10,000,000. Upon the occurrence of the conditions described in paragraph (a) of this Article 17 giving rise to Guarantor's obligation to pay any amount to the Vendor and if Vendor is holding any funds in escrow pursuant to this paragraph (b), Vendor shall disburse such escrowed amount, first, to itself to be applied against any amount due Vendor from Guarantor under paragraph (a) of this Article, and second, the balance, if any, to the Guarantor.

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(c) The Guarantor hereby agrees that its obligations hereunder shall be unconditional and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever, irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of circumstances which might otherwise limit the recourse of the Vendor to the Vendee. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

(d) In the event that the Guarantor shall make any payments to the Vendor on account of its obligations hereunder, the Guarantor hereby covenants and agrees that it shall not acquire any rights, by subrogation or otherwise, against the Vendee or with respect to any of the Units of the Equipment by reason of such payments, all such rights being hereby irrevocably released, discharged and waived by the Guarantor.

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

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

ARTICLE 19. Recording. Prior to the delivery and acceptance of any Unit of the Equipment and prior to the settlement for such Unit, the Vendee will cause this Agreement, any assignments hereof by the Vendee and any amendments or supplements hereto and thereto, in each case to be filed, registered, recorded, or deposited and refiled, reregistered, rerecorded, or redeposited, with the ICC in accordance with Section 20c of the Interstate Commerce Act. The Vendee will, from time to time, do and perform any other act and will execute, acknowledge, deliver, and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection in the United States of America, to the satisfaction of the Vendor and its counsel, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement and any assignment hereof. The Vendee will promptly furnish to the Vendor evidences of such filing, registering, depositing or recording and of such publication of notice of such deposit and an opinion or opinions of counsel with respect thereto, each satisfactory to the Vendor and its counsel.

ARTICLE 20. Payment of Expenses. The Vendee will pay all reasonable costs and expenses (other than the fees and expenses of the Builder, the Manager, and their respective attorneys) incident to this Agreement and the first assignment of this Agreement, and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement; provided, however, if the Builder's rights under this Agreement are assigned, the Vendor shall pay promptly upon receipt of request thereof by Vendee up to \$200,000 of such expenses.

ARTICLE 21. Article Headings; Effect and Modification of Agreement; Immunities. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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As between the Vendor and the Vendee, this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Vendee with respect to the Equipment and supersedes all other prior agreements, oral, or written, between them with respect to the Equipment (including, without limitation, the Consent and Agreement of the Builder appended to a certain Purchase Agreement Assignment dated as of the date hereof). No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Vendee.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee, P. O. Box 510,
Brownsville, Pennsylvania 15417;
Attention: Secretary;

(b) to the Builder, Post Office Box
188, West Ninth Street, Berwick, Pennsylvania
18603, Attention: Comptroller;

(c) to the Guarantor, One Customs House
Square, Wilmington, Delaware 19801,
Attention: Secretary;

(d) to any assignee of the Vendor, or of
the Vendee, at such address as may have been
furnished in writing to the Vendee or the
Vendor, as the case may be, by such assignee;

(e) to the Manager, 120 Oak Street,
Tawas City, Michigan 48763,
Attention: Charles A. Pinkerton, III

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

ARTICLE 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording, registering, or depositing hereof and of any assignment hereof shall be filed, recorded, registered or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking on the units of the Equipment.

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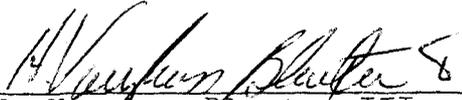
The Vendee and the Guarantor (a) designate the United States District Court for the Southern District of Ohio, Western Division, as a forum where any and all matters pertaining to this Agreement may be adjudicated, and (b) by the foregoing designation, consent to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of Ohio hereby irrevocably appoints the Secretary of State of the State of Ohio as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States registered mail at the address specified in Article 22 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Agreement against the other in any other competent court.

ARTICLE 24. Execution. This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent, shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

WITNESSES:

HILLMAN MANUFACTURING COMPANY


H. Vaughan Blaxter III

BY: 
Steven N. Hutchinson
Vice President

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WITNESSES:

WHITTAKER CORPORATION (Berwick Forge and Fabricating Division)

Linda C. Steiniede

BY: *Charles J. Gilmore*
CHARLES J. GILMORE, Controller
WILMINGTON SECURITIES, INC.

BY: *J. W. Adams*
J. W. Adams, President

STATE OF OHIO)
 : SS:
COUNTY OF HAMILTON)

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared Steven N. Hutchinson, V.P. of Hillman Manufacturing Company, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

J. David Rosenberg

Notary Public
J. DAVID ROSENBERG, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

STATE OF OHIO)
 : SS:
COUNTY OF HAMILTON)

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared Charles J. Gilmore, Controller of WHITTAKER CORPORATION (Berwick Forge and Fabricating Division), the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and

voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

J. David Rosenberg
Notary Public

J. DAVID ROSENBERG, Attorney at Law
Notary Public, State of Ohio
My Commission has no expiration date
Section 147.03 O. R. C.

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF Allegheny)

SS:

On this 3rd day of November, 1978, before me, Joan B. Kane, the undersigned officer, personally appeared J. W. Adams, who acknowledged himself to be the authorized officer of Wilmington Securities, Inc., a corporation, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Joan B. Kane

My commission expires on _____, 1978.

JOAN B. KANE, NOTARY PUBLIC
PITTSBURGH, ALLEGHENY COUNTY
MY COMMISSION EXPIRES SEPT. 27, 1982
Member, Pennsylvania Association of Notaries

ANNEX A
TO
CONDITIONAL SALE AGREEMENT

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Manager's Road Numbers (Both In- clusive)</u>	<u>Unit</u>	<u>Base Price</u> <u>Aggrega</u>
70 Ton, 50'-6" General Purpose Boxcars	250	DM 10001- 10250	\$33,300	\$8,235,

Delivery

November -
December, 1978
at Builder's Plant

MANAGEMENT AGREEMENT

Annex B to
Conditional Sale Agree

BETWEEN

HILLMAN MANUFACTURING COMPANY,
AS OWNER

AND

DETROIT AND MACKINAC RAILWAY COMPANY,
AS MANAGER

DATED AS OF OCTOBER 31, 1978

(COVERING UP TO 250 GENERAL PURPOSE BOXCARS)

Filed and recorded with the Interstate Commerce Commission
pursuant to Section 20c of the Interstate Commerce Act on
November , 1978 at _____, Recordation No. _____.

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*This Index is included for convenience only and does not form a part of, or affect any construction or interpretation of this Instrument.

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MANAGEMENT AGREEMENT dated as of October 31, 1978, between HILLMAN MANUFACTURING COMPANY, a Pennsylvania corporation (hereinafter called the "Owner") and DETROIT AND MACKINAC RAILWAY COMPANY, a Michigan railroad corporation (hereinafter called "Manager").

WHEREAS, the Owner has entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") with WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (hereinafter called the "Builder"), and WILMINGTON SECURITIES, INC. (hereinafter called the "Guarantor"), wherein the Builder has agreed to construct, sell and deliver to the Owner certain units of railroad equipment described in Schedule A hereto, (hereinafter individually called a "Unit" and collectively the "Units" or "Equipment"), a copy of which Conditional Sale Agreement has been delivered to the Manager; and

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to The Provident Bank as Agent (hereinafter called the "Agent") pursuant to an Agreement and Assignment (hereinafter called the "Assignment") dated as of the date hereof between the Builder and the Agent, a copy of which has been delivered to the Owner, the Guarantor and the Manager; and

WHEREAS, the Owner desires to provide the Equipment to the Manager so that the Manager may use, manage, and maintain the Equipment pursuant to the terms of this Agreement, and the Manager desires to take possession of and responsibility as hereinafter set forth for, the Equipment, and to use, manage and maintain the Equipment pursuant to the provisions hereof;

NOW, THEREFORE, in consideration of the foregoing premises and of the mutual covenants hereinafter contained, the parties hereto hereby agree as follows:

1. Provision and Ownership/Use of Equipment. Owner hereby agrees to provide the Equipment to Manager, and Manager agrees to accept, use, manage and maintain the Units, upon the terms and conditions hereinafter set forth.

2. Delivery and Acceptance of Equipment. The Owner hereby appoints the Manager its agent for inspection and acceptance of the Units pursuant to the Conditional Sale Agreement. The Owner will cause the sample Unit and each other Unit to be delivered to the Manager at the point or points within the United States of America at which such Unit is delivered to the Owner under the Conditional Sale Agreement. Upon such delivery, the Manager, at its own expense, will cause an authorized representative of the Manager to inspect the sample Unit, and if such Unit is

found to conform to the specifications described in the Conditional Sale Agreement and all applicable governmental regulations to accept delivery of such Unit and to execute and deliver to the Owner, the Agent and to the Builder a certificate of acceptance (hereinafter called a "Certificate of Acceptance") in accordance with the provisions of the Conditional Sale Agreement, stating that such Unit has been delivered, inspected and accepted on behalf of the Manager and the Owner on the date of such Certificate of Acceptance (such date being hereinafter called the "Delivery Date") and is marked in accordance with Section 8 hereof; whereupon such Unit shall be deemed to have been delivered to and accepted by the Manager and shall be subject thereafter to all the terms and conditions of this Management Agreement.

3. Term. The initial term of this Management Agreement (hereinafter called the "Initial Term") as to each Unit shall begin on the date of the delivery to and acceptance by the Manager of such Unit and, shall terminate with respect to all Units on December 31, 1998; provided, however, this Management Agreement shall automatically be extended for successive periods of 12 months each (hereinafter called an "Extended Term") with respect to all Units not suffering a Casualty Occurrence (as hereinafter defined) until such time as the Manager or Owner shall give written notice to the other not less than six months prior to the end of the Initial Term or any Extended Term of its intention to terminate this Management Agreement, in which case this Management Agreement shall terminate as to all, but not less than all, of the Units on the last day of the Initial Term or the Extended Term set forth in such notice.

The obligations of (i) the Manager to make the Remittances (as hereinafter defined) due and payable hereunder, and (ii) the Owner to reimburse the Manager for maintenance expenses, taxes and other amounts hereinafter required to be reimbursed by the Owner shall survive the expiration of the Initial Term or any Extended Term of this Management Agreement.

4. Interline Use of Equipment. Manager shall cause the Units to be loaded and placed into interline interchange service (in the United States of America, Canada and/or Mexico) in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") Interchange Rules and Agreements as soon as practicable after their respective Delivery Dates and shall cause the Equipment to continue to be used in such interline interchange service throughout the term of this Management Agreement.

At no time during the term of this Management Agreement will Manager give preference for railroad car loadings on its tracks with shipments destined for locations off Manager's tracks (such shipments being hereinafter called "Outbound Loadings") to railroad equipment similar to the Units owned, leased, managed, interchanged or otherwise obtained by Manager from others over the preference for Outbound Loadings given to the Units; provided, however, that if at any time during the term of this Agreement, Manager shall waive Rules 1 and/or 2 of the AAR Interchange Rules, and if, for any period of six consecutive months thereafter, Utilization of the Units (as hereinafter defined in Section 6) is less than 80%, then Manager shall thereafter give preference (to the fullest extent permitted by applicable law) to the Units for Outbound Loadings over all other similar railroad equipment owned, leased, managed, interchanged or otherwise obtained by Manager until Utilization of the Units shall be not less than 80% for six consecutive months. If for any period during the term of this Management Agreement the Manager shall give preference for Outbound Loadings to railroad equipment owned, leased, managed, interchanged or otherwise obtained by Manager over the preference given to the Units, or if the Manager shall fail to give preference to the Units according to the provisions of the preceding sentence, then the Manager shall pay to the Owner the difference between the revenue earned by the Units during such period and the revenue which the Units would have earned if the Utilization of the Units had been 80% for such period.

5. Remittance of Earnings. All payments (except those arising in respect of a Casualty Occurrence as hereinafter defined) received by Manager from other railroads or from any other party for use of or relating to the Units including, without limitation, mileage charges, straight car hire payments, penalties and incentive car hire payments shall, to the fullest extent permitted by law, promptly be paid by Manager to the Owner, not later than the fifth (5) business day after the receipt thereof by Manager, together with an accounting thereof as soon as practicable thereafter. Additionally, not later than the fifth (5) business day after the end of each month, Manager shall remit to the Owner, an amount equal to the lesser of (i) straight car hire payments and incentive car hire payments, if any, for each Unit for each day for which Manager has received demurrage during the preceding month, and (ii) the total amount of demurrage received by the Manager for such Units during such month. (All sums required to be paid by Manager to Owner pursuant to the provisions of this Section 5 are hereinafter sometimes collectively referred to as "Remittances").

Manager shall use its best efforts to collect from all other railroads over whose tracks the Units travel and from any other party using the Units any and all sums which may be due from time to time from such other railroad or party with respect to the Units including, without limitation, mileage charges, straight car hire payments, demurrage, penalties, and incentive car hire payments.

If any Remittance referred to above is due on other than a business day, such remittance shall then be payable on the next succeeding business day, and no interest shall be payable for the period from and after the nominal date for payment thereof to such next succeeding business day.

6. Management Fees. In addition to reimbursement for expenses incurred by Manager for maintenance, insurance, taxes, or other purposes as otherwise provided herein, but only to the extent so set forth herein, Manager shall be paid a fee not later than the earlier of March 31, 1979 or the Delivery Date of the 250th Unit of \$100 per Unit delivered and accepted pursuant to this Management Agreement.

As additional compensation for its duties hereunder, Manager shall be paid by Owner a fee of \$240 per Unit per annum commencing on the date of acceptance of each Unit respectively. Such fee shall be payable quarterly (i) in arrears on December 31, 1978, March 31, 1979 and June 30, 1979, and (ii) in advance on the first day of each July, October, January and April during the remaining term as hereof commencing July 1, 1979. Such fee shall be prorated proportionately for periods less than a full calendar quarter with respect to (i) any Unit suffering a Casualty Occurrence and (ii) the calendar quarter during which a Unit is first delivered to and accepted by the Manager hereunder.

For the purposes of this Management Agreement, including computation of "Incentive Management Fees" (as hereinafter defined), the terms "Utilization of the Units" and "Fixed Expenses", shall have the following meanings:

(a) "Utilization of the Units" shall be a fraction, the denominator of which (sometimes herein called "100% Utilization Revenue") is the amount that would be payable to Owner in accordance with the provisions of Section 5 hereof with respect to the period for which Utilization of the Units is being determined, assuming that all of the Units traveled fifty-six (56) miles each day during such period and earned per diem and incentive per diem payments, if applicable, under the then prevailing AAR Car Hire Rate Table, and none

of such travel was on Manager's tracks; and the numerator of which is the actual aggregate of all payments (including, without limitation, mileage charges, straight car payments, and incentive car payments) actually received by Owner from Manager for use of such Units during such period. Each Unit shall be subject to inclusion in the determination of Utilization of the Units as of its Delivery Date. In the event that:

(i) a Unit has been destroyed or damaged beyond repair, and has been so reported in accordance with Rule 7 of the AAR Car Purchase and Car Hire Agreement Code of Car Hire Rules-Freight; and

(ii) the Casualty Value with respect to such Unit has been received by the Owner,

said destroyed or damaged Unit may be removed from inclusion in the determination of Utilization of the Units as of the date the payment of Car Hire Payments under the AAR Car Service and Car Hire Agreement Code of Car Hire Rules-Freight with respect to such Unit shall cease. Utilization of the Units shall be calculated for all the Units then subject to this Management Agreement during any period for which such calculation shall be made, and not on a Unit-by-Unit basis.

(b) "Fixed Expenses" for any period shall be determined on a cash basis and shall be deemed to be the sum of (i) property taxes with respect to the Units paid by Owner or reimbursed to Manager by Owner pursuant to Section 9 hereof; (ii) insurance premiums with respect to the Units paid by Owner or reimbursed to Manager by Owner pursuant to Section 21 hereof; (iii) an allowance for maintenance at the rate of \$600 per Unit per annum (whether the actual costs of maintenance reimbursed to Manager by Owner pursuant to Section 12 hereof shall be greater or less than \$600 per Unit per annum); (iv) installment payments of Conditional Sale Indebtedness together with interest thereon (as defined in the Conditional Sale Agreement) required to be paid to the Agent pursuant to the Conditional Sale Agreement as now in effect and Agreement and Assignment for such period; (v) Eight Percent (8%) per annum of the sum of (x) the portion of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment payable by the Owner to the Vendor pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale

Agreement, (y) the reasonable costs and expenses paid by the Owner pursuant to Article 20 of the Conditional Sale Agreement, less the first \$200,000 of such expenses paid by the Vendor pursuant to the proviso contained in such Article and (z) \$130,000; and (vi) the sum of \$90,000 per annum.

If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or in any calendar year thereafter during the term of this Management Agreement, the Remittances paid to Owner pursuant to Section 5 hereof equal or exceed the amount of the payments which would have been remitted to Owner pursuant to Section 5 hereof in such period if the Utilization of the Units for such period had been 85%, then Owner shall pay Manager an incentive fee (herein called an "Incentive Fee") equal to one-half of the excess of (i) the Remittances received by Owner during such period over (ii) the Fixed Expenses for such period.

If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, the Remittances paid to Owner pursuant to Section 5 hereof are less than the amount of the payments which would have been received by Owner if the Utilization of the Units for such period had been 85%, but exceed the Fixed Expenses for such period, Owner shall pay Manager an Incentive Fee equal to (x) the payments remitted to Owner pursuant to Section 5 hereof in such period minus (y) one-half of the sum of (i) the payments which would have been remitted to Owner pursuant to Section 5 hereof in such period if the Utilization of the Units for such period had been 85% plus (ii) the Fixed Expenses for such period; provided, however, that no fee, credit, debit or other adjustment shall arise under this paragraph if the foregoing calculation shall result in a negative number.

By way of example of the foregoing and not in limitation thereof, Schedule B is attached hereto and incorporated herein by this reference thereto for the purpose of illustrating the calculation of Incentive Management Fees under this Section 6.

Any Incentive Fee payable pursuant to the preceding paragraphs of this Section 6 shall be determined as soon as practicable after each December 31 during the term of this Management Agreement, but no later than February 1 of each year, and shall be paid by Owner within thirty (30) days of the final determination of such amount.

7. Adjustments for Underutilization. If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, the Utilization of the Units for such period exceeds 85%, then the Incentive Fee payable to Manager pursuant to the provisions of the 4th paragraph of Section 6 hereof attributable to the Utilization of Units in excess of 85% shall be deemed, for the purposes hereof, to be an "Adjustment Credit". If, in the period commencing on the Delivery Date of the first Unit and ending on December 31, 1979, or for any calendar year thereafter during the term of this Management Agreement, up to and including 1994, the Utilization of the Units in such year is less than eighty percent (80%), [or if, in any year during the term of this Management Agreement after 1994, the Utilization of the Units in such year is less than sixty percent (60%)], then within thirty (30) days after the determination of Utilization of the Units for such year, Manager shall pay over to Owner an amount equal to the lesser of (a) one-half of the difference between the payments theretofore received with respect to such year for the Units and the payments that would have been received if the Utilization rate for the Units for such year were 80% [or, if such is 1995 or later, 60%], or (b) the Adjustment Credits theretofore accrued less any sums theretofore paid to Owner pursuant to this sentence. Within thirty (30) days after the determination of Utilization of the Units for such year, Manager may, at its option and upon not less than 10 days prior written notice to Owner, make such payments to Owner as shall equal the difference, if any, between (c) the sum of (i) 200% of amount of any Adjustment Credits paid over by Manager to Owner in accordance with the immediately preceding sentence, plus (ii) the Remittances theretofore received by Owner with respect to such year for Units and (d) the Remittances that would have been received by Owner if the Utilization of the Units for such year were 80% [or, if such year is 1995 or later, 60%]. If Manager shall not make the optional payments in accordance with the immediately preceding sentence, Owner may terminate this Management Agreement as to all or such lesser number of Units as Owner shall determine on 10 days written notice to Manager; provided, however, that if during such year there was a strike or Act of God which resulted in Utilization of the Units below Eighty Percent (80%), (or, if such year is 1995 or later, Sixty Percent (60%)), and unless in the reasonable good faith opinion of Owner such strike or Act of God is expected to result in Utilization of the Units below Eighty Percent (80%), (or, if such year is 1995 or later, Sixty Percent (60%)), for the Ninety (90) day period immediately subsequent to the date of determination of the Utilization of the Units for such year, then Owner may not terminate this Agreement pursuant to the provisions of the first clause of this sentence.

8. Identification Marks. The Manager will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not therein listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Management Agreement to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each Unit, in letters not less than one inch in height, the following words:

"OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED
UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c--
THE PROVIDENT BANK, CINCINNATI, OHIO, AGENT, SECURITY
OWNER"

or other appropriate words designated by the Owner, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Owner's title to and property in such Unit and the rights of the Owner under this Management Agreement. The Manager will not place any such Unit in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace promptly any such names and words which may be removed, defaced or destroyed. The Manager will not change the identifying number of any Unit unless and until (i) a statement of a new number or numbers to be substituted therefor shall have been filed with the Owner and filed, recorded and deposited by the Manager in all public offices where this Management Agreement shall have been filed, recorded and deposited including, without limitation, the ICC, Official Railway Equipment Register and the Universal Machine Language Equipment Register, and (ii) the Manager shall have furnished to the Owner an opinion of counsel to the effect set forth in subparagraph (iv)(B) of Section 26 hereof in respect of such statement.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for its out-of-pocket expenses so invoiced in keeping each Unit numbered and marked in accordance with the provisions of this Section 8. Manager shall be entitled to issue such invoice up to Thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than Five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the reimbursement of such expense pursuant to this Section 8, such liability

shall continue, notwithstanding the expiration of this Management Agreement, until all such expenses are paid or reimbursed by the Owner.

Except as above provided, the Manager will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; provided, however, that the Manager may cause the Units to be lettered with the names or initials or other insignia customarily used by the Manager or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to manage the Units as permitted under this Management Agreement.

9. Taxes. Manager shall pay and discharge all sales, use, personal property, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature, together with any penalties, fines or interest thereon (the foregoing being hereinafter called "Impositions") imposed against Owner, any assignee of Owner's rights hereunder, Manager or the Equipment by any Federal, state or local government or taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, use, operation, return, sale or other disposition thereof hereunder or in connection herewith, or upon the rentals, receipts, or earnings arising therefrom, or upon or with respect to this Management Agreement (excluding, however, taxes on, or measured by, the net income of Owner or any such assignee) unless, and to the extent only that, any such Imposition is being contested by Manager or Owner in good faith and by appropriate proceedings and the non-payment thereof does not, in the reasonable opinion of the Owner, adversely affect the title, property or rights of the Owner to or in the Equipment under the Conditional Sale Agreement and Assignment.

If any Imposition is levied against Manager and the Units are included in the calculation of such Imposition, then, (a) if such Imposition is apportioned by the appropriate taxing authority between the Units and the other property owned or used by Manager, then Owner shall have the right (but not the obligation) to contest such apportionment, at its own expense, by any proceedings Owner deems appropriate under the circumstances, and (b) if such Imposition is not apportioned by the appropriate taxing authority between the Units and the other property owned or used by Manager, then such Imposition shall be apportioned between Owner and Manager on such basis as Owner and Manager shall agree and, failing such agreement, as may be determined by a majority decision of a panel of three (3) independent arbitrators, one of whom shall be selected by Manager, one of

whom shall be selected by Owner, and the third to be selected by the Owner and Manager designated arbitrators; provided, however, that if such Imposition is based upon the value of property, the portion of such Imposition apportioned to Owner shall in no event exceed the fraction thereof, the denominator of which is the value of all of the railroad equipment and all other property owned or used by Manager (whether similar or dissimilar to the Units and whether real, personal or mixed) included in the property on which such Imposition is based, and the numerator of which is the value of the Units (with "value", in each case, determined in a manner consistent with the manner in which value is defined and calculated for the purpose of such Imposition under the laws, rules and regulations in effect during the period for which such Imposition is assessed). If Manager shall be entitled to any credit against any such Imposition or any other government charge, which credit shall arise as a result of any expenditure by Manager not related to the Units, then Manager shall be entitled to the full benefit of such credit.

Manager shall comply with all federal, state and local laws concerning the preparation and filing of tax returns with respect to the Equipment and shall provide copies of such returns to Owner not less than five (5) business days prior to the filing of such return. Owner shall have the right to review all such tax returns prior to their filing, and shall have the right to approve or object to any such tax returns or portions thereof which relate to the Equipment. Unless Owner objects to the filing of such return and so notifies Manager before such return is filed, Owner shall be deemed to have approved such return. In the event Owner objects to the filing of such return as prepared by Manager, such return shall be revised as Owner and Manager shall agree and, failing such agreement, as Owner shall direct, unless Manager is advised by its independent legal counsel that such return would not be in compliance with any applicable governmental law, rule or regulation, in which event, Owner may file such return on its own behalf if permitted to do so, and if not so permitted by applicable law, Manager shall file such return as it determines to be proper and correct under applicable law.

If, and to the extent permissible under the laws of the State of Michigan, Owner shall have the right to pay any personal property or similar tax, assessment or other government charge with respect to the Units, in lieu of Manager paying such Imposition, then Owner shall have the right, but not the obligation, to pay such imposition and upon agreeing to pay such Imposition, Owner shall be freed of its obligation to reimburse Manager with respect thereto under the provisions of this Section 9.

For purposes of this Section 9, the term "Impositions" shall include, and the Manager shall be entitled to reimbursement from Owner in accordance with the next succeeding paragraph for, any incremental taxes on personal property paid by Manager as a result of or arising out of its performance of the transactions contemplated hereby. Such incremental taxes shall be the difference between (i) the amount of such personal property taxes actually paid by the Manager (whether during the term of this Agreement, or after its expiration), and (ii) the amount of taxes on personal property which the Manager would have paid in the absence of this Agreement and the transactions contemplated hereby. Upon expiration of the term of this Agreement, Owner shall reimburse Manager for any incremental taxes on personal property which the Manager will incur subsequent to such termination. In the event the Manager and the Owner cannot agree upon the amount of such incremental taxes on personal property, either party may demand that such dispute be resolved by a panel of Three (3) arbitrators in the manner set forth in the second paragraph of this Section 9, in which case the dispute shall be submitted for arbitration and the decision of a majority of the panel of arbitrators shall be binding upon the parties.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all Impositions so invoiced by Manager with respect to the Equipment, except such Impositions (i) on (based upon, or measured by) net income from the Equipment earned by or imposed on Manager, (ii) penalties assessed against Manager because of its failure to comply timely with any applicable governmental law, rule or regulation and (iii) Impositions the amount of which are under dispute and being submitted to arbitration pursuant to the preceding paragraph. Manager shall be entitled to issue such invoice up to Thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than Five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any

Imposition pursuant to this Section 9, such liability shall continue, notwithstanding the expiration of this Management Agreement, until all such Impositions are paid or reimbursed by the Owner.

10. Reports and Records. On or before March 31 in each year, commencing with the year 1980, the Manager shall furnish to the Owner an accurate statement signed by an executive officer of Manager (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units then subject to this Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or have been withdrawn from use pending repairs (other than running repairs) during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Owner may reasonably request, (b) stating that, in the case of all Units repaired or repainted during the period covered by such statement, the numbers and markings required by Section 8 hereof have been preserved or replaced, and (c) certifying that all amounts, whether Remittances or otherwise, payable hereunder by Manager to Owner through the preceding December 31 have been paid, or if any have not been paid, identifying such unpaid amounts and the reason for their nonpayment. The Owner shall have the right, by its agents, to inspect the Equipment and the Manager's records with respect thereto at such reasonable times as the Owner may request during the term of this Agreement.

Manager shall also furnish, or cause to be furnished to Owner on or before April 30 in each year during the term of this Agreement, commencing with the year 1979, audited financial statements of Manager prepared in accordance with generally accepted accounting principles.

In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise, or there shall occur any other material interruption or termination of use of any Unit regardless of the cause (such occurrences being hereinafter called a "Casualty Occurrence"), during the term of this Management Agreement, the Manager shall, within five (5) days after it shall have determined that such Unit has suffered a Casualty Occurrence, fully notify the Owner with respect thereto.

Additionally, Manager shall furnish to Owner all other reports, statements and information prepared by Manager or otherwise in the possession of Manager which Owner is required to provide to the Vendor pursuant to Article 8 of the Conditional Sale Agreement. Such reports, statements and information shall be delivered to Owner sufficiently in advance of the dates on which Owner is required to deliver such items to the Vendor so as to enable the Owner to comply with Article 8 of the Conditional Sale Agreement.

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The Manager shall prepare and deliver to the Owner at least five (5) days prior to the required date of filing (or, to the extent permissible, file on behalf of the Manager) any and all reports (other than income tax returns) relating to maintenance, registration and operation of the Equipment to be filed by the Manager with any federal, state or other regulatory authority by reason of the ownership by the Owner of the Units or the provision thereof to the Manager. Such documents shall include, but are not limited to, registration with the ICC, in the official Railway Equipment Register and in the Universal Machine Language Equipment Register and any and all reports which may be required from time to time by any governmental agency with jurisdiction over the Agent, the Owner, the Manager, or the Equipment. Manager shall perform all record keeping functions relating to use of the Equipment, and shall maintain records relating thereto whether such use is by Manager or other railroads, all in accordance with AAR Railroad Interchange Agreements and Rules. Such records shall include, but not be limited to, car hire reconciliations. Manager shall supply Owner with copies of such records regarding use of the Equipment as Owner may reasonably request. All records maintained hereunder, including all records of payments received in connection with the use of the Equipment, or expended in connection with the maintenance of the Equipment, charges and correspondence relating to the Equipment shall be separately recorded and maintained by Manager in a form suitable for reasonable inspection by Owner from time to time during Manager's regular business hours.

11. DISCLAIMER OF WARRANTIES AND COMPLIANCE WITH LAWS AND RULES. THE OWNER MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE MANAGER HEREUNDER, AND THE OWNER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, NOR SHALL OWNER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT), it being agreed that all such risks, as between the Owner and the Manager, are to be borne by the Manager. The Manager's delivery of a Certificate of Acceptance shall be conclusive evidence as between the Manager and the Owner that all Units described therein are in all the foregoing respects satisfactory to the Manager, and the Manager will not assert any claim of any nature whatsoever against the Owner based on any of the foregoing matters.

The Owner hereby appoints and constitutes the Manager its agent and attorney-in-fact during the term of this Management Agreement to assert and enforce, from time to time, in the name of and for account of the Owner, at the Owner's sole cost and expense, whatever claims and rights the Owner may have under the provisions of Article 13 of the Conditional Sale Agreement which claims and rights the Manager shall assert and enforce.

The Manager agrees, for the benefit of the Owner to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all rules of the Department of Transportation, the ICC and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any Unit, the Manager will conform therewith; provided, however, that the Manager or Owner may, in good faith, contest, at the expense of the contesting party, the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Owner, adversely affect the property or rights of the Owner and does not result in a Unit being removed from the regular interline interchange service contemplated hereby; and provided, further, that no such alterations, modifications or replacement of parts shall be made without the prior authorization of the Owner unless made by a railroad other than the Manager without the prior approval of the Manager.

Title to any such alteration, replacement or addition of or to any part on any Unit shall be and remain with Owner.

12. Maintenance of Equipment. Manager shall inspect all Units interchanged to insure that such Units are in good working order and condition in the same manner as Manager inspects railroad equipment owned by it. Manager shall at all expense, whatever claims and rights the Owner may have under times keep the Equipment in good repair and efficient condition and working order, eligible for interchange with other railroads pursuant to AAR Interchange Standards. Manager shall supply all parts, services, and other items required in the operation and maintenance of the Equipment. All parts, replacements, substitutions and additions to or for any Equipment shall immediately become Equipment and the property of Owner. Charges to Owner by Manager for all repairs, maintenance and servicing performed by Manager pursuant to the provisions hereof shall be in an amount equal to the actual costs of materials and direct labor (and charges, if any, by other railroads) incurred by Manager in effecting such repairs, maintenance and servicing; but in no event, shall such charges exceed AAR Standard Rates as in effect at the time of such repairs, maintenance or service, or such other rules which supercede or replace AAR Standard Rates.

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Anything herein to the contrary notwithstanding, Owner shall have the right to require that any or all repairs, maintenance and/or servicing on any or all of the Units be performed by one or more other railroads or others able to do such work if Owner determines that such work can be done by others at more favorable rates in which event the cost of transporting the Equipment to such other railroads shall be borne by the Owner. Promptly upon request therefor from Manager, Owner will reimburse Manager for all costs, expenses, fees and charges incurred in connection with repairing, maintaining and servicing the Units, unless any such repairs, maintenance or servicing was (or were) (i) occasioned by the negligence or willful misconduct of Manager or any of Manager's agents or employees or (ii) would be deemed a "handling line responsibility" pursuant to Rule 96 of the AAR Field Manual as in effect at the time, or such other rule which supercedes or replaces such provision. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any maintenance expense pursuant to this Section 12, such liability shall continue notwithstanding the expiration of this Management Agreement, until all such maintenance expenses are reimbursed or paid by the Owner.

13. Default. If, during the continuance of this Management Agreement, one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur and be continuing:

- A. default shall be made in the payment by Manager of any sum required to be paid or remitted hereunder, and such default shall continue for a period of five (5) days after notice from the Owner that it believes such payment is due;
- B. Manager shall operate any Unit or permit any Unit to be operated at a time when the insurance required by Section 21 shall not be in effect unless the Manager is unable to terminate use of such units;
- C. any representation or warranty, made by Manager in this Management Agreement is untrue in any material respect, or any statement, report, schedule, notice or other writing furnished by Manager to Owner in connection herewith is untrue in any material respect on the date as of which the facts set forth are stated or certified;
- D. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Manager contained herein, and such default shall continue

for thirty (30) days after written notice thereof from the Owner to the Manager;

- E. any act of insolvency by Manager, or the filing by Manager of any petition or action under any bankruptcy, reorganization, insolvency, or moratorium law, or any other law or laws for the relief of, or relating to, debtors;
- F. the filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Manager that is not dismissed within sixty (60) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Manager, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within sixty (60) days from the date of said filing or appointment;

then, in any such case, the Owner, at its option may:

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Manager of the applicable covenants of this Management Agreement (and Manager agrees to bear Owner's costs and expenses, including reasonable attorneys' fees, in securing such enforcement) or to recover damages for the breach thereof; and/or

(b) by notice in writing to the Manager terminate this Management Agreement, whereupon all rights of the Manager to manage, possess and use the Units shall absolutely cease and terminate as though this had never been made, but the Manager shall remain liable as hereinafter provided; and/or

(c) by its agents enter upon the premises of the Manager or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess and enjoy the same free from any right of the Manager, or its successors or assigns, to use the Units for any purposes whatever;

but the Owner shall, nevertheless, have a right to recover from the Manager any and all amounts which under the terms of this Management Agreement may be then due or which may have accrued to the date of or subsequent to the date such termination and also to recover forthwith from the Manager, (i) any damages and expenses, including reasonable attorney's fees, in addition thereto which the Owner shall have sustained by reason of the breach of any covenant, representation or warranty of this Management Agreement, and (ii) all costs

and expenses incurred in searching for, taking, removing, keeping, and storing such Units of Equipment, and (iii) all additional amounts owing by Manager hereunder, whether as Remittances, indemnification, or otherwise.

The remedies in this Management Agreement provided in favor of the Owner shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Manager hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is not, at the time in question, prohibited by law. The Manager hereby waives any and all existing or future claims to any offset against the Remittances or any other payments due Owner hereunder and agrees to make such Remittances and all other payments regardless of any offset or claim which may be asserted by the Manager or on its behalf.

The failure of the Owner to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

The non-payment by Owner of any sum required herein to be paid or reimbursed by Owner to Manager not later than fifteen (15) days after such payment is due shall be a default (hereinafter called an "Owner Default") by Owner hereunder unless the amount not paid by Owner is disputed by Owner and Owner shall have given notice to Manager of the nature of such dispute. Upon the occurrence of such an Owner Default, Manager shall be entitled to exercise the rights provided to it under Paragraph 6(a)(1)(C) of the Finance Agreement to (1) direct the Agent to withhold further disbursements to the Owner pursuant to the Finance Agreement, and (2) obtain reimbursements from the Agent [from the sums the Agent is then holding under Paragraph 6(a)(1)(C) of the Finance Agreement] of such amounts as the Manager requests for out-of-pocket expenses paid (or to be paid within thirty (30) days of the date of such request) by the Manager to third parties pursuant to the Manager's obligations under this Management Agreement and for which the Manager reasonably believes itself to have the right to reimburse from the Owner hereunder. In addition, Manager shall have such other rights as may be available to it at law or in equity; provided, however, so long as the Management Agreement Assignment shall be in effect, (i) Manager shall not offset any amounts which it claims to be due from Owner against any Remittances or other payments it is obligated to make pursuant to this Management Agreement, and (ii) Manager shall continue to perform and observe each and every other duty and covenant required to be performed or observed by the Manager hereunder,

notwithstanding the occurrence and continuance of an Owner Default. In the event the Owner disputes the occurrence of an Owner Default claimed by the Manager, or the Owner and Manager are unable to agree upon the disposition of any moneys held by the Agent pursuant to the proviso of Paragraph 6(a)(1)(C) of the Finance Agreement, such dispute or disagreement may be submitted, upon the request of either party, to a panel of three (3) independent arbitrators, one of whom shall be selected by Manager, one of whom shall be selected by Owner, and the third to be selected by the Owner and Manager designated arbitrators. The determination of a majority of such arbitrators as to such dispute or disagreement shall be binding upon both parties hereto.

14. Return of Units Upon Default. If an Event of Default shall occur and be continuing or if this Management Agreement shall terminate pursuant to Section 13 hereof, the Owner may take, or cause to be taken or demand from the Manager, immediate possession of Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Manager. For such purpose, the Owner may enter upon the premises of the Manager or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Manager, with or without process of law.

In case the Owner shall demand possession of the Equipment pursuant to this section and shall designate a reasonable location or locations on the lines or premises of the Manager or points at which the lines of the Manager interconnect with the lines of any other railroad for the delivery of Equipment to the Owner, the Manager shall at its own cost, expense and risk, forthwith and in usual manner, cause the Equipment to be moved to such location or locations on Manager's lines or interchange point or points and shall there deliver the Equipment or cause it to be delivered to the Owner and if so without the right to any reimbursement (except as hereinafter specifically provided to contrary), obliterate any insignia or other indentifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. At the option of the Owner, the Owner may keep the Equipment on any of the lines or premises of the Manager until the Owner shall have leased, sold or otherwise disposed of the same (whether by public or private sale or otherwise), and for such purpose, the Manager agrees to furnish, without charge

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of rent or storage, the necessary facilities at any point or points selected by the Owner reasonably convenient to the Manager; provided such storage without rent shall not exceed a period of sixty (60) days from the date Manager makes the Equipment available to Owner and if so requested by Owner, Manager shall, at its own expense and without the right to any reimbursement (except as hereinafter specifically provided to the contrary), obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. During any storage period, the Manager will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser or lessee of any such Unit, to inspect the same. Without in any way limiting the obligation of the Manager under the foregoing provisions of this Section 14, the Manager hereby irrevocably appoints the Owner as agent and attorney of the Manager with full power and authority, including the power of substitution, at any time while the Manager is obligated to deliver possession of any Unit to the Owner to demand and take possession of such Unit in the name and on behalf of the Manager from whomsoever shall be in possession of such Unit at the time. This Agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Manager requiring specific performance hereof. The foregoing provisions of this Section 14 notwithstanding, if this Management Agreement shall terminate pursuant to an Event of Default under Clause E or F of Section 13 of this Agreement at a time when the Utilization of the Units for the Twelve (12) month period immediately preceding such termination exceeded Seventy-Five Percent (75%), then Manager shall be entitled to reimbursement from the Owner for all of Manager's expenses incurred on complying with the requirements of this Section 14 of this Agreement. In accordance with the foregoing sentence and promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for its expenses so invoiced incurred in connection with returning the Units, obliterating any insignia or other identifying markings and restoring the exterior of such Units to their original appearance pursuant to the provisions of this Section.

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The Manager hereby expressly waives any and all claims against the Owner and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

15. Sublease, Assignment, Merger of Manager. So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to the possession and use of the Units in the manner and to the extent that railroad cars similar to the Units are customarily used in the railroad freight business and in accordance with the terms of this Management Agreement, but, without the prior written consent of Owner, Manager shall not assign or transfer its interest under this Management Agreement or in or to the Equipment.

So long as Manager shall not be in default under this Management Agreement, Manager shall be entitled to manage the Units and to permit the use of the Units upon railroads in the usual interline interchange of railway traffic, but only upon and subject to all the terms and conditions of this Management Agreement, provided, however, that the Manager (to the fullest extent permitted by applicable law) (a) shall not assign or permit the assignment of any Unit to service involving the regular operations and maintenance thereof outside the United States or permit any Unit to be outside the United States for more than 50% of any calendar year, and (b) shall not at any time permit more than 10% of the Units to be located outside the United States of America. Manager shall receive for the account of Owner compensation for such use from other railroads so using any of the Units. No assignment, lease or interchange entered into by Manager hereunder shall relieve Manager of any liability or obligations hereunder which shall be and remain those of a principal and not a surety.

Nothing in this Section 15 shall be deemed to restrict the right of Manager to assign or transfer its rights and interest under this Management Agreement in the Equipment or possession of the Equipment to any corporation (which shall have expressly assumed in writing the due and punctual payment and performance of all obligations hereunder of Manager) into or with which Manager shall have become merged or consolidated or which shall have acquired the property of Manager as an entirety or substantially as an entirety.

16. Assignment by Owner. Owner and any direct or remote assignee of any right, title or interest of Owner hereunder shall have the right at any time or from time to

time to assign part or all of its right, title and interest in and to this Management Agreement, but Manager shall be under no obligation to any assignee except upon written notice of such assignment from Owner. Without limiting the foregoing, Owner and any such assignee shall have the right at any time or from time to time to transfer its right, title and interest, under this Management Agreement.

Owner may obtain financing through a financial institution and secure such financial institution (hereinafter by granting a security interest or other lien on any or all the Equipment, this Management Agreement and sums due under this Management Agreement. In such event (a) the security agreement or lien instrument will specifically provide that such assignment of this Management Agreement will not relieve Owner from its obligations hereunder or be construed to be an assumption by such Secured Party of such obligations (but any such Secured Party may perform, at its option, some or all of Owner's obligations); (b) upon request by Owner or Secured Party, Manager will make all payments of amounts due hereunder directly to Secured Party; (c) Manager's obligations hereunder, including (without limitation) its obligation to make the Remittances described in Section 5 hereof, shall not be subject to any reduction, abatement, defense, set-off, counterclaim or recoupment for any reason whatsoever, which, however, shall not prevent Manager from asserting any claim separately against Owner or exercising its rights pursuant to Paragraph 6 (a)(1)(C) of the Finance Agreement; (d) Manager will not, after obtaining knowledge of any such assignment, consent to any modification of this Management Agreement without the consent of Secured Party; and (e) Manager will provide to Owner and Secured Party such certificates, statements or other information as Owner may reasonably request, including, without limitation, a "no-default certificate".

17. Return of Units Upon Expiration of Term. As soon as practicable on or after the expiration (or earlier termination pursuant to Sections 7 or 31) of the term of this Management Agreement with respect to any Unit, the Manager shall deliver possession of such Unit to the Owner upon such storage tracks of the Manager or to such interchange point or points of Manager as the Owner reasonably may designate, provided that such storage on the Manager's storage tracks does not interfere with the operation of the railroad of the Manager. The Manager will permit the Owner to store such Unit on such tracks for a period not exceeding sixty (60) days after delivery of possession to Owner hereunder and transport the same, at any time within such sixty (60) day period, to any reasonable place on the lines of railroad operated by the Manager, or to any connecting carrier for shipment, all as directed by the Owner, such movement and storage of any such Unit on the storage tracks of the

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Manager to be at the expense and risk of the Owner. During said sixty (60) day storage period and at the expiration thereof, the Manager agrees to transport the Units to any other reasonable place designated by the Owner, the movement of such Units to such places (other than to the places set forth in the immediately preceding sentence) to be at the expense and risk of the Owner. Manager shall remit to Owner promptly upon receipt thereof, any and all income earned and received by the Manager for use of such Units by others, including all income received from users pursuant to the Interstate Commerce Commission Car Hire Rate Table (hereinafter "Gross Revenues") during such movement, and the Manager shall use its best efforts to realize such Gross Revenues on such Units during such movement. During any storage period provided herein the Manager will maintain any insurance required pursuant to Section 21 hereof and will permit the Owner or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Units, to inspect the same; provided, however, that the Manager shall not be liable, except in the case of negligence of the Manager or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Owner or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Management Agreement, and upon application to any court of equity having jurisdiction in the premises, the Owner shall be entitled to a decree against the Manager requiring specific performance of the covenants of the Manager so to assemble, deliver, store and transport the Units. Each Unit returned to the Owner pursuant to this Section 17 shall (i) be in the same operating order, repair and condition as when originally delivered to the Manager, reasonable wear and tear excepted, (ii) meet the standards then in effect under the Interchange Rules of the AAR and/or the applicable rules of any governmental agency or other organization with jurisdiction for use of such Units in regular railroad interchange service, and if so requested by Owner, Manager shall, obliterate any insignia or other identifying markings or lettering it has theretofore placed on the Equipment and restore the exterior to its original appearance, wear and tear otherwise hereunder permitted being excepted. Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all out-of-pocket expenses incurred by Manager in storing, delivering, insuring, obliterating any insignia or other markings on, or repairing or rehabilitating any of the Units pursuant to this Section 17. Owner's obligations to so reimburse the Manager shall survive the expiration (or earlier termination pursuant to Section 7 or 31) of the term of this Agreement.

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18. Manager's Warranties; Indemnification. Manager represents and warrants that:

(a) Manager is a corporation duly organized and existing in good standing under the laws of the State of Michigan.

(b) Manager is duly authorized to execute and deliver this Management Agreement, and is duly authorized to manage the Equipment hereunder and to perform its obligations hereunder.

(c) The execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder, do not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Manager or to which Manager is a party.

(d) The execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) Manager's financial statement as at December 31, 1977, a copy of which has been furnished to Owner, has been prepared in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and presents fairly the financial position of Manager as at the date thereof, and the results of its operations for the period then ended, and since such date there has not been any material adverse change in its financial position.

(f) This Management Agreement is a legal, valid and binding obligation of Manager, enforceable in accordance with its terms.

(g) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis (except as previously disclosed in writing by Manager to Owner) or the ability of Manager to perform its obligations under this Management Agreement.

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(h) To the best knowledge of Manager, there is no material fact which Manager has not disclosed to Owner in writing, nor so far as Manager can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Manager or the ability of Manager to perform its obligations under this Management Agreement.

The Manager hereby assumes liability for and agrees to indemnify, protect, save and keep harmless the Agent and each Investor (as defined in the Conditional Sale Agreement), and their respective successors, assigns, agents and servants, (each of the foregoing, as well as any successor or assign of any of the foregoing, together with its respective agents and servants being hereinafter in this paragraph referred to as an "Indemnatee"), from and against any and all liabilities, obligations, losses, damages, penalties, claims (including, without limitation, claims involving strict or absolute liability), actions, suits, costs, expenses, and disbursements (including, without limitation, legal fees and expenses, of whatsoever kind and nature whether or not any of the transactions contemplated hereby are consummated) except such costs and expenses described in Article 20 of the Conditional Sale Agreement to be the responsibility of the Vendee and such other costs and expenses as the Owner specifically assumes or agrees to pay or reimburse pursuant to this Management Agreement, imposed on, incurred by or asserted against any Indemnatee (whether or not also indemnified against by any other person under any other document) in any way relating to or arising out of (i) the Finance Agreement (as defined in the Conditional Sale Agreement), the Conditional Sale Agreement, Assignment, this Management Agreement, the Management Agreement Assignment (as defined in the Conditional Sale Agreement), or the transactions contemplated by the foregoing instruments, (ii) the manufacture, purchase, acceptance or rejection of the Equipment, and (iii) the ownership, delivery, non-delivery, lease, sublease, possession, use, operation, maintenance, condition, registration, sale, return, storage or other disposition of the Equipment; provided, however, that the foregoing indemnity shall not extend to any liability, obligation, loss, damage, penalty, claim, action, suit, cost, expenses or disbursement of any Indemnatee (A) resulting from the gross negligence or willful misconduct of such Indemnatee, (B) which is a tax, fee or other charge, based upon net income, gross receipts, franchise tax measured by net income based upon such gross receipts, or excess profits tax imposed upon such Indemnatee, (C) resulting from the failure of such Indemnatee to make available to the Agent the aggregate amount of its Commitment (as defined in the Finance Agreement) unless such failure shall

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be the result of the failure to satisfy a condition precedent to such Commitment or (E) in the nature of a claim for or loss resulting from the non-payment of principal or interest due under the Conditional Sale Agreement with respect to the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement). If either party hereto has knowledge of any liability hereunder indemnified against, it shall give prompt notice thereof to the other and the party entitled to be indemnified, as the case may be.

The Manager's obligations under the indemnities provided for in this Management Agreement shall be those of a primary obligor whether or not the party indemnified shall also be indemnified with respect to the same matter under the terms of the Finance Agreement, or any other document or instrument, and the person seeking indemnification from the Manager pursuant to any provisions of this Management Agreement may proceed directly against the Manager without first seeking to enforce any other right of indemnification. Upon the payment in full by the Manager of any indemnity provided for under this Management Agreement, the Manager shall be subrogated to any right of the person indemnified in respect of the matter as to which such indemnity was paid. It is the intention of the parties hereto that Manager's maximum liabilities under the indemnification provisions of this Section 18 shall be co-extensive with, but not greater than, Owner's indemnification obligations pursuant to the Finance Agreement and Conditional Sale Agreement.

The indemnities and agreements of the Manager provided for in this Management Agreement, and the Manager's obligations under any and all thereof, shall survive the expiration or other termination of this Management Agreement, the Conditional Sale Agreement, Assignment, Management Agreement or Management Agreement Assignment.

19. Owner's Warranties. Owner represents and warrants that:

(a) Owner is a corporation duly organized and existing in good standing under the laws of the State of Delaware.

(b) Owner is duly authorized to execute and deliver this Management Agreement, and is duly authorized to own the Equipment and to perform its obligations hereunder.

(c) The execution and delivery of this Management Agreement by Owner and the performance by Owner of its obligations hereunder, do not conflict with any provision

of law or of the charter or by-laws of Owner or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Owner or to which Owner is a party.

(d) The execution, delivery and performance of this Management Agreement by Owner and the consummation by Owner of the transactions contemplated hereby do not require the consent, approval or authorization of, or notice to, any federal, state or local governmental authority or public regulatory body.

(e) There are not any pending or threatened actions or proceedings before any court or administrative agency which will to a material extent adversely affect the financial condition or continued operation of Owner or the ability of Owner to perform its obligations under this Management Agreement.

(f) To the best knowledge of the Owner, there is no fact which Owner has not disclosed to Manager in writing, nor, so far as Owner can now reasonably foresee, which will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of Owner or the ability of Owner to perform its obligations under this Agreement.

20. Ownership of Equipment; Federal Income Taxes. It is the intent of the parties to this Management Agreement that Owner shall at all times be and remain the owner of all Units of Equipment. Manager shall at no time take any action or file any instrument which is inconsistent with the foregoing intent. Upon the request of Owner and/or any government agency having jurisdiction and/or any third party designated in writing by Owner as having an interest in the Equipment, Manager will take such action legally permissible and execute such documents as may be necessary to accomplish or more fully evidence the foregoing intent.

Owner shall be entitled to claim deductions, credits, and other benefits as are provided by the Internal Revenue Code of 1954, as amended, to the date hereof (hereinafter called the "Code"), to an owner of property, including, without limitation: (a) the maximum depreciation deduction for any year (hereinafter called the "Depreciation Deduction") with respect to the Units authorized under Section 167 of the Code, (b) deductions with respect to the interest payable under the Conditional Sale Agreement pursuant to Section 163 of the Code (hereinafter called the "Interest Deduction"), and (c) investment tax credit with respect to the Equipment

authorized pursuant to Sections 38 and 50 of the Code (hereinafter called the "ITC"). In furtherance of the foregoing, Manager shall maintain such records, execute such documents and take such other action as may be reasonably requested by Owner to permit Owner to claim the Depreciation Deduction, Interest Deduction, and ITC with respect to the Units and Manager shall take no action inconsistent with the foregoing intent.

21. Insurance. The Manager will maintain, at all times during the term of this Management Agreement (and thereafter during the 60 day period in which the Units are being stored pursuant to Sections 14 or 17 hereof), with reputable insurers acceptable to the Owner, insurance on each Unit in an amount not less than the greater of (i) the fair market value of each Unit as determined by Owner, or (ii) the Conditional Sale Indebtedness with respect to each Unit from time to time outstanding under the Conditional Sale Agreement, insuring against loss and destruction of, and damage to, such Unit arising out of theft, loss, damage, destruction, fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Manager.

Manager shall further maintain with reputable insurers acceptable to Owner public liability and property damage insurance with respect to the Units in amounts not less than the greater of (a) the amounts of insurance maintained by Manager with respect to railroad equipment of a similar kind owned by Manager, or (b) bodily injury and property damage liability insurance in an amount not less than (x) \$1,000,000 with respect to personal injury to, or the death of, any one person, (y) \$5,000,000 with respect to personal injury to or the death of any number of persons arising out of one accident or occurrence and (z) \$2,500,000 for property damage with self insurance retention and deductibles not to exceed \$100,000. Each liability policy shall be primary without right of contribution from any other insurance which is carried by Owner and shall expressly provide that all of the limits thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured.

All such insurance policies shall (i) name the Manager, Owner and the Agent as the co-insureds, with losses to be payable to all such entities as their interests may appear, (ii) provide that the policies will not be invalidated as against the Owner or the Agent because of any violation of a condition or warranty of the policy or application therefor by Manager, and (iii) provide that the policies may be

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materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Owner and the Agent. The Manager shall deliver to the Owner prior to the First Closing (as defined in the Finance Agreement) to the commencement of the term of this Management Agreement for any Unit (or at such other time or times as the Owner may request) a certificate or other evidence of the maintenance of all such insurance required hereunder satisfactory to the Owner. In the event, at any time, the insurance required by this Section 21 shall not be in full force and effect, Manager shall not use the Equipment and shall use its best efforts to prohibit the use of any Unit of the Equipment by any other entity.

The proceeds of any insurance received by Owner on account of loss, damage or destruction to any Unit of the Equipment may, but are not required to, be used to acquire a replacement unit of railroad equipment similar to the Units which replacement unit may be delivered to the Manager and upon acceptance thereof, shall be subjected to this Management Agreement as if it were one of the original Units delivered hereunder.

Promptly upon delivery of an invoice therefor from Manager, Owner shall reimburse Manager for all insurance premiums so invoiced by Manager with respect to the Equipment. Manager shall be entitled to issue such invoice up to thirty (30) days prior to any date on which it reasonably expects to incur the expense so invoiced, in which event Owner shall reimburse Manager in advance for such invoiced expenses not later than five (5) days prior to the date on which the Manager reasonably expects to actually incur such expense. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any insurance premiums pursuant to this Section 21, such liability shall continue, notwithstanding the expiration of this Management Agreement, until all such insurance premiums are reimbursed by the Owner. Owner shall have the right to purchase directly any and all insurance required under this section 21. If Owner exercises this right it shall so notify Manager and each other party to which notice may otherwise be required to be sent. Manager's obligations hereunder shall be deemed to have been performed to the extent actually performed by the Owner pursuant to this paragraph.

22. Recording; Expenses. Prior to the delivery and acceptance hereunder of any Unit, the Manager will cause this Management Agreement to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and the Equipment to be duly registered in the Official Railway Equipment Register and the Universal Machine Language Equipment Register. The Manager will also cause any Management Agreement Assignment during the term hereof to be so filed and recorded. The Manager will from time to time, do and perform any other act

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and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Owner for the purpose of proper protection, to the satisfaction of Owner of the Owner's title to the Equipment or for the purpose of carrying out the intention of this Management Agreement. The Manager will promptly furnish to the Owner evidences of all such filing, registering, recording, depositing, refiling, reregistering, rerecording and/or redepositing, and an opinion or opinions of counsel for the Manager with respect thereto satisfactory to the Owner.

Promptly upon request therefor from Manager, Owner shall reimburse Manager for all out-of-pocket expenses incurred by Manager in connection with the filing and recording of this Management Agreement, any Management Agreement Assignment, such other instruments and documents as are required to be prepared, filed, recorded, rerecorded, deposited or redeposited, and the reasonable fees of legal counsel incurred pursuant to this Section 22. In the event that, during the continuance of this Management Agreement, the Owner becomes liable for the payment or reimbursement of any recording expenses incurred by Manager pursuant to this Section 22, such liability shall continue, notwithstanding the expiration of this Management Agreement, until such expenses are reimbursed by the Owner.

23. Interest on Overdue Payments. Anything to the contrary herein contained notwithstanding, any nonpayment of amounts and other obligations due hereunder shall result in the obligation on the part of the Manager promptly to pay also, to the extent legally enforceable, an amount equal to 12% per annum of the overdue amounts for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

24. Notices. Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails, first class postage prepaid, addressed as follows:

if to the Owner:

Hillman Manufacturing Company
P.O. Box 510
Brownsville, Pennsylvania 15417
Attention: Secretary

with copies to:

The Provident Bank, Agent
One East Fourth Street
Cincinnati, Ohio 45202
Attention: J. Lynn Brewbaker

and

Messrs. Keating, Muething & Klekamp
1800 Provident Tower
One East Fourth Street
Cincinnati, Ohio 45202
Attention: J. David Rosenberg

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if to the Manager:

Detroit and Mackinac Railway Company
120 Oak Street
Tawas City, Michigan 48763
Attention: Charles A. Pinkerton III

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

25. Right to Perform. If Manager fails to make any payments required by this Management Agreement, or to perform any of its other agreements contained herein, Owner may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Owner's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Manager to Owner upon demand unless such expenses are of the type which Owner is required to reimburse to Manager upon request as herein elsewhere provided.

If Owner fails to make any payments required under the Conditional Sale Agreement, or to perform any of its other agreements contained therein, Manager may itself, but shall not be required to, make any such payments or perform any such obligations. The amount of any such payment and Manager's expenses, including (without limitation) reasonable legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by Owner (but only out of the monies then or thereafter distributable to the Owner by the Agent under the Finance Agreement) to Manager upon demand unless such expenses are of the type which Manager is required to incur without reimbursement therefor pursuant to any other Section of this Management Agreement.

26. Conditions to Owner's Obligations. Owner shall not be obligated hereunder unless on or before, but no more than five (5) days before, each Closing Date of Units under the Conditional Sale Agreement;

(i) all of Manager's representations and warranties in Section 18 of this Management Agreement shall be true and correct as though made as of such date;

(ii) no litigation or governmental proceedings shall be threatened or pending against Manager or any subsidiary which in Owner's reasonable opinion will to a material extent adversely affect the ability of Manager to perform its obligations hereunder;

(iii) no Event of Default, or event which might mature into an Event of Default, shall have occurred or be continuing hereunder;

(iv) Manager shall have furnished to Owner, in form and substance satisfactory to Owner, the following on or prior to such date hereunder:

(A) resolutions of the Board of Directors of Manager, certified by its Secretary or an Assistant Secretary, authorizing the management of such Equipment hereunder and the execution, delivery and performance by Manager of this Management Agreement;

(B) a favorable opinion of counsel for the Manager or special ICC counsel, acceptable to Owner, dated such date to the effect that:

(1) Manager is a corporation duly organized and existing in good standing under the laws of the State of Michigan;

(2) Manager is duly authorized to execute and deliver this Management Agreement, and is duly authorized to lease Equipment hereunder and to perform its obligations hereunder;

(3) the execution and delivery of this Management Agreement by Manager, and the performance by Manager of its obligations hereunder and thereunder, do not and will not conflict with any provision of law or of the charter or by-laws of Manager or of any indenture, mortgage, deed of trust or agreement or instrument binding upon Manager or to which Manager is a party;

(4) the execution, delivery and performance of this Management Agreement by Manager and the consummation by Manager of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any federal or state governmental authority or public regulatory body;

(5) this Management Agreement is a legal, valid and binding obligation of

Manager enforceable in accordance with its terms (except as may be affected by bankruptcy, reorganization, insolvency and similar laws affecting the rights of creditors generally);

(6) there are not to the knowledge of such counsel any pending or threatened actions or proceedings before any court or administrative agency which will, in the opinion of such counsel, to a material extent adversely affect the financial condition or continued operation of Manager and its subsidiaries on a consolidated basis;

(7) this Management Agreement has been duly filed and recorded with the ICC pursuant to Section 20c of the Interstate Commerce Act, such filing and recording will protect Owner's interests in and to the Units of Equipment, and no further filing or recording (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of Owner in and to the Units;

(8) to the effect set forth in subparagraph (h) of Section 18 hereof and as to such other matters as Owner shall reasonably request.

(C) an invoice covering the Units of Equipment for which such payment is requested;

(D) a Certificate of Acceptance of Manager covering the Units of Equipment for which such payment is requested.

(E) evidence that the insurance required pursuant to Section 21 hereof is in full force and effect.

27. Severability; Effect and Modification of Management Agreement; Owner. Any provision of this Management Agreement which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Management Agreement exclusively and completely states the rights of the Owner and the Manager with respect to the Units and supersedes all other agreements, oral or written, with respect thereto. No variation or modification of this Management Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Owner and the Manager.

Whenever the term "Owner" is used in this Management Agreement, it shall mean Hillman Manufacturing Company, and any assignee, in whole or in part, of Owner's rights hereunder, including any Secured Party.

28. Execution. This Management Agreement may be executed in several counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent, shall be deemed the original counterpart and all other counterparts shall be deemed duplicates thereof. Although for convenience, this Management Agreement is dated as of the date first above set forth, 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.

29. Law Governing. The terms of this Management Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, registering, recording or depositing hereof and of any assignment hereof or out of the marking on the Units as shall be conferred by the laws of the several jurisdictions in which this Lease or any assignment hereof shall be filed, registered, recorded or deposited and any rights arising out of the marking on the Units.

The parties hereto (a) designate the United States District Court for the Southern District of Ohio, Western Division, as a forum where any and all matters pertaining to this Agreement may be adjudicated, and (b) by the foregoing designation, consent to the jurisdiction and venue of such Court for the purpose of adjudicating any and all matters pertaining to this Agreement. Each party hereto not having an agent for service of process of record with the Secretary of State of the State of Ohio hereby irrevocably appoints the

Secretary of State of the State of Ohio as the agent for service of process in any proceeding instituted hereunder and each party hereto agrees that service of process upon such agent, in accordance with the then-prevailing and applicable law as hereinabove agreed to, with a copy of such summons or other instrument mailed to such party by United States Registered Mail at the address specified in Section 24 hereof, shall, upon receipt by such party, constitute proper service on such party for all purposes without objections of any kind whatsoever. Notwithstanding the provisions of this paragraph, any party hereto shall also be entitled to institute legal proceedings to adjudicate matters pertaining to this Agreement against the other in any other competent court.

30. Miscellaneous. This Management Agreement and the Exhibits hereto shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

It is expressly understood and agreed that this Management Agreement does not constitute any joint venture or partnership and the parties hereto agree to execute such other instruments and take such other actions as may be reasonably requested by either party hereto to evidence the foregoing intention.

This Management Agreement and the Schedules hereto, each of which are made a part hereof by this reference thereto, contain the entire understanding and agreement between the parties upon the subject matter of this Management Agreement and, except as otherwise provided herein, may be changed only by written amendment signed by Manager and Owner. Any prior understandings and agreements between the parties are merged herein except only as otherwise expressly stated.

The Index and Article headings set forth herein are for convenience and reference only and are not intended to modify, limit, describe or affect in any way the contents, scope, intent or interpretation of this Management Agreement.

31. Default Under Conditional Sale Agreement. Notwithstanding the absence of any Event of Default by the Manager, hereunder, and so long as the Management Agreement Assignment shall be in effect, if

(i) all the Owner's right, title and interest in and to the Equipment shall have terminated pursuant to Article 16 of the Conditional Sale Agreement following a Declaration of Default hereunder,

(ii) and the Agent shall not have received or accepted an offer to purchase the Equipment from the Manager

pursuant to the last paragraph of Article 16 of the Conditional Sale Agreement, then the Agent shall, upon notice to the Manager, either

(a) terminate this Management Agreement as of the date on which the Owner's right, title and interest in and to the Equipment terminated under the Conditional Sale Agreement, or

(b) assume all the obligations of the Owner under this Management Agreement.

In the event the Agent assumes this Management Agreement and the obligations of the Owner hereunder pursuant to the foregoing sentence, the Owner shall be released of all its obligations to the Manager becoming due after the date of such assumption and the Management Agreement shall continue in full force and effect from the date of such assumption as if the Agent were named "Owner" herein.

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

HILLMAN MANUFACTURING COMPANY

BY: _____
Steven N. Hutchinson, Vice President

WITNESS:

H. Vaughan Blaxter III

DETROIT & MACKINAC RAILWAY COMPANY

BY: _____
Charles A. Pinkerton III,
Vice President

WITNESS:

Keith Gollust

STATE OF OHIO)
 : SS:
COUNTY OF HAMILTON)

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared STEVEN N. HUTCHINSON, VP of Hillman Manufacturing Company, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

Notary Public

STATE OF OHIO)
 : SS:
COUNTY OF HAMILTON)

BE IT REMEMBERED, That on the 31st day of October, 1978, before me, the subscriber, a Notary Public in and for said County and State, personally appeared CHARLES A. PINKERTON, III, of Detroit & Mackinac Railway Company, the corporation whose name is subscribed to and which executed the foregoing instrument, and for himself and as such officer, and for and on behalf of said corporation, acknowledged that he did execute said instrument on behalf of said corporation, and that the signing and execution of said instrument is his free and voluntary act and deed, his free act and deed as such officer, and the free and voluntary act and deed of said corporation for the uses and purposes mentioned in said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal on the day and year aforesaid.

Notary Public

SCHEDULE A
 TO
MANAGEMENT AGREEMENT

<u>Specifications</u>	<u>Maximum Quantity</u>	<u>Manager's Road Numbers (Both In- clusive)</u>	<u>Base Price</u>	
			<u>Unit</u>	<u>Aggregat</u>
70 Ton, 50'-6" General Purpose Boxcars	250	DM 10001- 10250	\$33,300	\$8,325,0

Delivery

November -
 December, 1978
 at Builder's
 Plant

SCHEDULE B

TO

MANAGEMENT AGREEMENT

Examples of Determination of Incentive Management Fee
under Section 6 of Management Agreement

With respect to each example below assume:

- (1) 100% Utilization Revenue = \$2,000,000 for which the determination is being made
- (2) Fixed Expenses = \$1,400,000 for period for which the determination is being made

Example 1: Actual revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,800,000

Utilization = \$1,800,000 divided by \$2,000,000 = 90%
Since Utilization is greater than 85%, Incentive Management Fee = $1/2 (1,800,000 - 1,400,000) = \$200,000$

Example 2: Actual revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,600,000

Utilization = \$1,600,000 divided by \$2,000,000 = 80%
Since Utilization is less than 85%, Incentive Management Fee = $\$1,600,000 - 1/2 (\$1,700,000 + \$1,400,000) = \$50,000$

Example 3: Actual Revenue received by Owner pursuant to Section 5 for period for which determination is being made = \$1,500,000

Utilization = \$1,500,000 divided by \$2,000,000 = 75%
Since Utilization is less than 85%, Incentive Management Fee = $\$1,500,000 - 1/2 (1,700,000 + 1,400,000) = -\$50,000$. Since this produces a negative number, no Incentive Management Fee is payable.

Annex C to
Conditional Sale Agreement

MANAGEMENT AGREEMENT ASSIGNMENT

DATED AS OF OCTOBER 31, 1978

FROM

HILLMAN MANUFACTURING COMPANY

TO

THE PROVIDENT BANK, CINCINNATI, OHIO
AS AGENT

(COVERING 250 GENERAL PURPOSE BOX CARS)

Filed and recorded with the Interstate Commerce Commission
pursuant to Section 20c of the Interstate Commerce Act on November , 1978
at _____ recordation number _____.

MANAGEMENT AGREEMENT ASSIGNMENT dated as of October 31, 1978 given by HILLMAN MANUFACTURING COMPANY, a Pennsylvania corporation (hereinafter called the "Vendee"), to THE PROVIDENT BANK, as Agent (hereinafter called the "Agent") for GREAT AMERICAN INSURANCE COMPANY and STONEWALL INSURANCE COMPANY (hereinafter called individually "Investor" and collectively the "Investors").

WHEREAS, WHITTAKER CORPORATION (BERWICK FORGE AND FABRICATING DIVISION) (hereinafter called the "Builder"), WILMINGTON SECURITIES, INC., a Delaware corporation (hereinafter called the "Guarantor") and the Vendee, have entered into a conditional sale agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (said equipment being hereinafter called collectively the "Equipment" or "Units" and individually a "Unit"); and the Vendee is agreeing with Detroit and Mackinac Railway Company, a Michigan corporation (hereinafter called the "Manager") to provide to the Manager the Equipment for use, maintenance and management thereof pursuant to a Management Agreement dated as of the date hereof (hereinafter called the "Management Agreement");

WHEREAS, concurrently with execution of this Management Agreement Assignment, the Agent is acquiring, pursuant to an agreement and assignment dated as of the date hereof (hereinafter called the "Assignment"), the security title, rights, and interests of the Builder under the Conditional Sale Agreement in the Units, all upon and subject to the terms and conditions of a finance agreement (hereinafter called the "Finance Agreement") dated the date hereof between the Investors and the Agent:

NOW, THEREFORE, WITNESSETH:

That in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by the Agent to the Vendee, the receipt of which is hereby acknowledged, the execution and delivery of the Finance Agreement and the Assignment by the Agent, and the mutual covenants herein contained:

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SECTION 1. The Vendee hereby assigns, transfers, and sets over unto the Agent the Management Agreement and all of its rights, powers, privileges, and remedies thereunder; provided, however, so long as no Declaration of Default (as defined in the Conditional Sale Agreement) under the Conditional Sale Agreement nor Owner Default (as defined in the Management Agreement) under the Management Agreement has occurred and is continuing, the Vendee is empowered to give any notice of an Event of Default under the Management Agreement to the Manager and/or to terminate said Management Agreement pursuant to its terms; and further, provided that so long as none of (i) a Declaration of Default (as defined in the Conditional Sale Agreement) under the Conditional Sale Agreement has occurred and is continuing, (ii) an Event of Default (as defined in the Management Agreement) under the Management Agreement has occurred and continued for thirty (30) days, and (iii) an Owner Default (as defined in the Management Agreement) under the Management Agreement has occurred and is continuing, the Agent will not give notice of an Event of Default under the Management Agreement to the Manager and/or terminate the Management Agreement pursuant to its terms.

SECTION 2. Anything herein contained to the contrary notwithstanding, the Vendee shall, so long as there is no existing Declaration of Default under the Conditional Sale Agreement, or Owner Default under the Management Agreement, be entitled to exercise all of its rights under the Management Agreement to enforce the obligation of the Manager to make the payments provided for under the Management Agreement, including the termination of the rights of the Manager under the Management Agreement.

SECTION 3. Anything herein contained to the contrary notwithstanding, the Vendee shall remain fully liable under the Management Agreement to perform all of the obligations assumed by it thereunder, and the Agent, its successors or assigns, shall have no obligation or liability under the Management Agreement by reason of or arising out of this Assignment of Management Agreement, nor shall the Agent, its successors, or assigns, be required or obligated in any manner to perform or fulfill any obligation of the Vendee under or pursuant to the Management Agreement, or to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, its successors or assigns, or to press or file any claim or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it, its successors or assigns, or to which it, its successors or assigns, may have been entitled at any time or times, provided that the Agent shall have first fully informed the Vendee promptly in writing of any such matters of which it has knowledge;

all subject, however, to the provisions of Section 31 of the Management Agreement and the last paragraph of Article 16 of the Conditional Sale Agreement.

SECTION 4. The rights hereby assigned include, without limitation thereto, the right of the Vendee to perform the Management Agreement at any time or from time to time and the right to receive all moneys due and to become under the Management Agreement, and such rights may be further assigned to another person or persons, in connection with the enforcement of the pledge thereof, and the obligations of the Vendee under the Management Agreement may be performed by the Agent or its successors or assigns, without releasing the Vendee therefrom provided that any subsequent assignee is a bank or trust company of the United States with assets of at least \$35,000,000.

SECTION 5. The Vendee does hereby constitute the Agent, its successors or assigns, its true and lawful attorney with full power (in the name of the Vendee or otherwise) to ask, require, demand, receive, compound, and give acquittance for and all moneys and claims for moneys due or to become due under or arising out of the Management Agreement, to draw any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which the Agent, its successors, or assigns, may deem to be necessary or advisable in the premises, all moneys received pursuant to this Management Agreement Assignment to be applied as herewith provided, all subject, however, to the second proviso set forth in Section 1 hereof.

SECTION 6. All sums payable to the Vendee under the Management Agreement which are hereby assigned, whether as rental payments, mileage charges, straight car hire payments or otherwise, shall be paid by the Manager directly to the Agent, its successors or assigns. All sums paid to the Agent, its successors or assigns, by the Manager by virtue of this Management Agreement Assignment shall be held or applied by the Agent, its successors or assigns, in accordance with the applicable provisions of the Finance Agreement and Conditional Sale Agreement to satisfy the obligations of the Vendee; provided, that the Agent shall promptly forward to the Vendee all sums expressly payable to the Vendee under such agreements.

SECTION 7. The Vendee agrees that any time and from time to time, upon the written request of the Agent, its successors or assigns, the Vendee will promptly and duly execute and deliver any and all such further instruments and documents as the Agent, its successors or assigns, may reasonable request in obtaining the full benefits of this Management Agreement Assignment and of the rights and powers herein granted.

SECTION 8. The Vendee does hereby warrant and represent that it has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Management Agreement Assignment shall remain in effect, any of its rights, title or interest in or to the Management Agreement anyone other than the Agent, its successors or assigns and that it will not take or omit to take any action, the taking or omission of which might result in the alteration, amendment, modification, or impairment of the Management Agreement or this Management Agreement Assignment or of any of the rights created by any of such instruments except as expressly provided in the Management Agreement. The Vendee does hereby ratify and confirm the Management Agreement and does warrant and represent that such Management Agreement is in full force and effect as to it, and that the Vendee is not default thereunder.

SECTION 9. The terms of this Management Agreement Assignment and all the rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act, such additional rights arising out of the filing, recording, or depositing of the Management Agreement and this Management Agreement Assignment as shall be conferred by the laws of the several jurisdictions in which the Management Agreement or this Management Agreement Assignment shall be filed, recorded, or deposited, or in which any unit shall be located, and any rights arising out of the markings on the Units.

SECTION 10. This Management Agreement Assignment may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recording and subsequently redelivered to the Agent shall be deemed to be the original counterpart and all other counterparts shall be deemed duplicates thereof. Although this Management Agreement Assignment is dated as of the date first above written for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgements hereto annexed.

SECTION 11. This Management Agreement Assignment shall take effect immediately upon the execution hereof and the powers and authorities granted to the Agent, its successors or assigns, herein, having been given for valuable consideration, are hereby declared to be irrevocable; provided, however, that when all of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and all other sums payable under the Conditional Sale Agreement have been paid or discharged in accordance with the terms thereof, and all other covenants and agreements contained therein shall have been performed, all right, title and interest herein assigned shall revert to the Vendee and this Management Agreement Assignment shall terminate unless all of the Vendee's right, title and interest in and to the Equipment shall have terminated following a Declaration of Default under the Conditional Sale Agreement, in which event all of Vendee's rights, title and interest in and to the Management Agreement hereby assigned shall terminate forthwith.

SECTION 12. In the event that the Agent has actual notice of an Event of Default under the Management Agreement, the Agent will give prompt notice to the Vendee of such Event of Default.

SECTION 13. The Agent agrees to furnish to the Vendee such information, statements and reports which the Vendee may reasonably request for the purpose of the Vendee carrying out its powers, obligations, and duties under the Management Agreement, or as will enable the Vendee to prepare tax returns; and the Agent will make available at reasonable

times for review or copying such books and records relating to the Equipment as the Vendee may reasonably request.

The Agent agrees to furnish to the Vendee copies of all notices, statements, documents, or schedules received by it under the Management Agreement, the Management Agreement Assignment, of the Conditional Sale Agreement and the Vendee shall cause similar copies to be delivered to the Agent if received by the Vendee.

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

HILLMAN MANUFACTURING COMPANY

Witness:

BY: _____
Steven N. Hutchinson, Vice-President

THE PROVIDENT BANK, Agent

Witness:

BY: _____
J. Lynn Brewbaker, Assistant
Vice-President

STATE OF OHIO)
 :SS.
COUNTY OF HAMILTON)

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared J. LYNN BREWBAKER, ASSISTANCE VICE-PRESIDENT, of THE PROVIDENT BANK, the corporation which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my Notarial Seal this 31st day of October 1978.

Notary Public

STATE OF OHIO)
 :SS.
COUNTY OF HAMILTON)

BEFORE ME, the Subscriber, a Notary Public in and for said County and State, personally appeared STEVEN N. HUTCHINSON, VICE PRESIDENT, of THE HILLMAN MANUFACTURING COMPANY, the corporation which executed the foregoing instrument, who acknowledged he did sign said instrument as such officer on behalf of said corporation, and by authority of its Board of Directors, and that the execution of said instrument is his free and voluntary act and deed individually and as such officer, and the free and voluntary act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereto subscribed my name and affixed my Notarial Seal this 31st day of October 1978.

Notary Public

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the Assignment made by, the foregoing Management Agreement Assignment is hereby acknowledged as of October 31, 1978.

DETROIT AND MACKINAC RAILWAY COMPANY

BY

Charles, A. Pinkerton III, Vice-President

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