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INTERSTATE COMMERCE COMMISSION

EXHIBIT A  
TO FINANCE AGREEMENT

RECONSTRUCTION  
AND  
CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1976

Among

FIRST SECURITY BANK OF UTAH, N.A.,

as Agent,

U.S. RAILWAY MFG. CO.,

FIRST SECURITY BANK OF UTAH, N.A.,

as Trustee

and joined for purposes of  
Articles 1, 4, 13 and 15 by

THE WESTERN PACIFIC RAILROAD COMPANY

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of March 1, 1976, among FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), U.S. RAILWAY MFG. CO. (hereinafter called the Builder), FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of March 1, 1976 (hereinafter called the Trust Agreement), with SAN FRANCISCO FINANCIAL #II (hereinafter called the Beneficiary), and for purposes of Articles 1, 4, 13 and 15 hereof, THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee).

The Vendee proposes to acquire all right, title and interest in certain used railroad equipment (hereinafter called the Hulks) from the Lessee pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of March 1, 1976, in substantially the form of Exhibit I hereto.

Pursuant to this Agreement, the Hulks will then be delivered to the Builder who will cause the Hulks to be reconstructed at the direction of, and in accordance with specifications of, the Vendee by adding to, and reconstructing the Hulks with, the Reconstruction (as defined in the Finance Agreement).

The Vendor will then acquire a security interest in the Hulks pursuant to this Agreement for the purpose of further securing its interest in the Reconstruction and pursuant hereto will sell its interest in the Reconstruction to the Vendee and the Vendee has agreed to purchase such interest in the Reconstruction (the Hulks and Reconstruction described in Schedule A hereto when referred to together being hereinafter called the Equipment).

The Vendee and the Lessee are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit II hereto, pursuant to which the Vendee is leasing the Equipment to the Lessee, subject to this Agreement, and the Vendee is assigning for security purposes its rights in, to and under the Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Exhibit III hereto. The rights

acquired by the Vendor pursuant to this Reconstruction and Conditional Sale Agreement shall be and are acquired for the benefit of the Investors identified in the Finance Agreement for whom the Vendor is acting as Agent pursuant to the terms of such Finance Agreement.

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

ARTICLE 1. Reconstruction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed as described in Schedule A hereto by adding to, and reconstructing the Hulks with, the Reconstruction and will deliver the Equipment to the Vendee and the Vendee will accept delivery of and pay for the Hulks and the Reconstruction as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications of the Vendee referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the parties hereto (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Builder warrants to the Vendor and the Vendee that the design, quality and component parts of the Equipment will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement. This Agreement supersedes The Western Pacific Railroad Company Purchase Order Number 31313 with respect to the reconstruction of the Hulks.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at such point or points within the United States of America specified in Schedule A hereto (or if Schedule A hereto does not specify a place or places, at the place or places designated from time to time by the Vendee) on or prior to July 26, 1976, freight charges, if any, prepaid; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement, the Lease and the Lease Assignment have been filed pursuant to Section 20c of the

Interstate Commerce Act. The Builder agrees not to accept for reconstruction, nor to commence any reconstruction of, any Hulk if the Builder does not reasonably anticipate that such Hulk will be fully reconstructed within fifteen (15) days following such commencement of reconstruction and in any case prior to July 26, 1976.

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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, but subject to the Hulk Purchase Agreement, the Vendor and the Vendee shall be relieved of their respective obligations to purchase and pay for any Hulk and Reconstruction not delivered and accepted on or prior to the earlier of (1) July 26, 1976 or (2) fifteen (15) days after the date on which the Builder receives written notice from the Vendee, the Vendor or the Beneficiary (a) of the occurrence of any event of default as defined in Article 14 hereof or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 14 hereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default hereunder, shall have occurred, or (b) that any of the conditions contained in Article 4 hereof have not been met or waived.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Hulks in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee 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 (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of delivery in the form of Exhibit IV hereto (hereinafter called the Certificate of Delivery) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 8 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 12 hereof. The Builder will give written notice to the Vendee of the Railroad Road Numbers of the last four (4) Hulks which it reconstructs for the Vendee.

ARTICLE 3. Grant of Security Interest, and Title to the Equipment. The Vendee hereby grants to the Vendor a security interest in the Hulks delivered to the Builder hereunder for reconstruction and the Vendor shall retain such interest in the Hulks during the entire period of reconstruction and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Reconstruction and shall have kept and performed all its agreements herein contained in respect thereof, 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 and the Lessee as provided in this Agreement and the Lease. Any and all additions to Hulks, and any and all parts installed on and additions and replacements made to any Hulk prior to delivery and acceptance hereunder or pursuant to Section 11(ii) of the Lease shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, 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, will (a) execute and deliver to the Vendee a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee, free of all

claims, rights, liens, security interest and other encumbrances created or retained hereby, (b) execute and deliver to the Vendee 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 such Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 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, forfeiture or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any such 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 ten days after written demand by the Vendee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment consist of the following: Base Reconstruction Cost and the sum per Hulk payable by Vendee to Lessee under the Hulk Purchase Agreement (hereinafter called the Hulk Cost) as both are set forth in Schedule A hereto. Such Base Reconstruction Cost is subject to such increase or decrease as is agreed to by the Builder, the Vendor, the Vendee and the Lessee; provided, however, that no such increase shall exceed ten percent (10%) of such Base Reconstruction Cost unless the Vendor shall otherwise agree. The term "Purchase Price" as used herein shall mean the Base Reconstruction Cost as so increased or decreased plus the Hulk Cost.

If on any Closing Date (as hereinafter defined in this Article) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Schedule A hereto (or such higher amount as the Vendee and the Vendor may agree to), the Vendor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Schedule A hereto (or such higher amounts as aforesaid).

The Equipment shall be settled for in four (4) groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean the following dates (or such other dates as the Builder and the Vendee may agree to), as to the following cumulative maximum number of units:

April 29, 1976	61
May 27, 1976	93
June 30, 1976	134
July 26, 1976	134

July 26, 1976 is herein called the Cut-Off Date.

On the Closing Date with respect to each Group, the Vendee shall pay to the Vendor an amount equal to the Hulk Cost for such Group and such amount shall be paid by the Vendor, on behalf of the Vendee, to the Lessee.

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, as follows:

(a) On the Closing Date with respect to each Group an amount equal to the difference between 24.7% of the aggregate Purchase Price of such Group and the Hulk Cost of such Group; and

(b) In 24 consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph and with respect to the immediately preceding paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 26 and July 26, commencing January 26, 1977, to and including July 26, 1988 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. (The term "business days" as used herein means calendar days,

excluding Saturdays, Sundays and any other day on which banking institutions in Salt Lake City, Utah are authorized or obligated to remain closed.) The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of nine percent (9%) per annum and such interest shall be payable, to the extent accrued, on July 26, 1976, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the aggregate of principal and interest payable on each Payment Date shall be substantially equal and such installments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of ten percent (10%) per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payment 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 6 hereof, the Vendee shall not have the privilege of prepayment any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

On the Closing Date with respect to each Group, an amount equal to the Base Reconstruction Cost of such Group shall be paid in immediately available funds by the Vendor to the Builder and an amount equal to the Hulk Cost of such Group shall be paid in immediately available funds by the Vendor to the Lessee (as seller of the Hulks prior to reconstruction), from the proceeds of the amount payable by the Vendee pursuant to the fourth paragraph of this Article 4 and clause (a) of the fifth paragraph of this Article 4 and the amounts available to the Vendor under and pursuant to the Finance Agreement; provided, that there shall have

been delivered to the Vendor on such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A Certificate or Certificates of Delivery with respect to the units of the Equipment in such Group as contemplated by Article 2 hereof and Section 2 of the Lease;

(b) A certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units hereunder and under the Lease;

(c) An invoice of the Builder pertaining to the Base Reconstruction Cost of the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) An opinion of Messrs. Brobeck, Phleger and Harrison, who are acting as special counsel for the Vendor and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) this Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the Vendor is vested with all the rights, titles, interests, powers and privileges purported to be retained by or granted to it hereunder, (iv) security interest to the units of the Equipment is validly vested in the Vendor and such units, at the time of delivery thereof to the Vendee hereunder, were free from all claims, liens, security interests and other encumbrances (other than those created by the Reconstruction and Conditional Sale Agreement and the rights of the Lessee under the Lease and the beneficial ownership of the Vendee in and to the Hulks and the Reconstruction), (v) no approval of the Interstate

Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, this Reconstruction and Conditional Sale Agreement or the Lease, or if any such authority is necessary, it has been obtained, (vi) this Reconstruction and Conditional Sale Agreement, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor in any state of the United States of America or the District of Columbia, and (vii) registration of this Reconstruction and Conditional Sale Agreement or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Vendor or such Investors;

(e) Certificate of the Vendee, dated as of such Closing Date, to the effect that (i) this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms and (ii) no approval is required of any governmental authority for the entering into or performance of this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease by the Vendee;

(f) An opinion of counsel for the Lessee, dated as of such Closing Date and addressed to the Vendee as well as the Vendor, to the effect set forth in clauses (v), (vi) and (vii) of subparagraph (d) above and as specified in Section 4 of the Lease, and stating that the Lessee is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and that this Agreement, the Lessee's Consent and Agreement and the Purchase Agreement have been duly

authorized, executed and delivered by the Lessee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments, binding upon the Lessee and enforceable against the Lessee in accordance with their terms;

(g) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect that upon payment to Builder for the reconstruction neither the Builder nor any party or person claiming by, through or under the Builder will have any claim, lien or interest in or against the Equipment by reason of the Builder's reconstruction work thereon and that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of this Agreement by the Builder, or if necessary, it has been obtained, and stating that (i) the Builder is duly organized and existing in good standing under the laws of its jurisdiction of formation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder, and assuming due authorization, execution, and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms;

(h) A receipt from the Lessee for any payment required to be made on such Closing Date to the Lessee with respect to the Hulks, unless such payment is made by the Vendor with funds furnished to it for that purpose by the Vendee;

(i) A certificate of an officer of the Lessee to the effect that the Lessee is not in default under, and to its knowledge, there is no event which, with the passage of time would place the Lessee in default under, the Lease or the Lessee's Consent and Agreement thereof or the Purchase Agreement;

(j) An opinion of counsel for the Beneficiary stating that the Beneficiary is a duly organized and existing partnership under the laws of the State of Utah and has the power and authority to control its properties and carry on its business as now conducted, and that the Trust Agreement has been duly authorized,

executed and delivered by the Beneficiary, and, assuming due authorization, execution and delivery by the Beneficiary and the Trustee, is a legal and valid instrument, binding upon the Beneficiary and enforceable against the Beneficiary in accordance with its terms; and

(k) Such other instruments, documents and assurances as may be requested by Messrs. Brobeck, Phleger and Harrison, the Vendor, or any of the Investors.

In giving the opinions specified in subparagraphs (d), (f), (g) and (j) above, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (i) as to authorization, execution and delivery by the Vendee of the documents executed by the Vendee on the Certificate of the Vendee, (ii) as to the authorization, execution and delivery by the Builder and the Lessee, and title to the Equipment at the time of delivery thereof hereunder on the opinion of counsel for the Lessee and the opinion of counsel for the Builder, respectively, and (iii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than California or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Lessee as to such matter.

The obligation of the Vendor hereunder to make payment for any of the Reconstruction is hereby expressly conditioned upon the Vendor having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to the fourth paragraph of this Article 4 and subparagraph (a) of the fifth paragraph of this Article 4. The Vendor shall not be obligated to make any abovementioned payment at any time after the earlier of the dates specified in the third paragraph of Article 2 hereof. In the event that the Vendor shall not make any such payment, the Vendor shall release to the Builder and the Vendee, as their interests may appear, without recourse to the Vendor, all right, title and

interest of the Vendor, if any, in and to the Hulks or the Reconstruction with respect to which payment has not been made by the Vendor. Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks or delivery of the Equipment.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 14 and 15 hereof), it is understood and agreed by the Vendor that the liability of the Vendee and the Beneficiary (for which the Vendee is acting as trustee) for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to Article 18 hereof and the fourth paragraph of this Article and subparagraph (a) of the fifth 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", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee and the Beneficiary for which the Vendee is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee and the Beneficiary (i) make no representation or warranty, and are not responsible for, the due execution, validity, sufficiency or enforceability of the lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 14 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 of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under Section 16 of the Lease and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) 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 due and payable on, or within six (6) days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease 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), (b) and (c) which were 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 due and payable on, or within six (6) days after, the date on which interest is payable on the Conditional Sale Indebtedness corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 15 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, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. 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 net 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 for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the interest 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 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; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance; Casualty Occurrences.

The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out beyond repair, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (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 informed in regard thereto. Provided the Lessee has not elected to provide a replacement unit in accordance with subparagraph (ii) of Section 11 of the Lease, on the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. 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, calculated as provided in the fourth paragraph of Article 4 hereof.

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 property 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, 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 thereof remaining unpaid on the date as of which such Casualty Value shall be determined, plus nine percent (9%) interest per annum accrued thereon but unpaid to the date of payment. 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.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments 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 damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 7. Reports and Inspections. On or before August 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding year (or since the date of this Agreement in the case of the first such statement) 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 8 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and all records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 8. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A or 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" 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 markings shall have been made thereon and will replace or will cause to be replaced promptly any such 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 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 Lessee or its affiliates.

#### ARTICLE 9. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee 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 lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, and Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require

any alteration, replacement or addition of 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 10. 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 Vendor 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 lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Lessee shall not be in default under the Lease or otherwise, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the Lease. 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 Lease and until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

The Vendee may also lease the Equipment to any other railroad company under conditions substantially similar to the conditions of the Lease with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to 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 (iii) a copy of such lease shall be furnished

to the Vendor. Disposal by the Lessee of any unit of Equipment pursuant to the Lease after a Casualty Occurrence shall not be deemed to be a breach of this Article 10.

ARTICLE 11. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its 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.

ARTICLE 12. 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 its 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 the Vendor retains an interest in the Equipment or the transfer of Vendor's interest in the Equipment by the Vendor pursuant

to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant made 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, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for the 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.

THE VENDOR MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER.

The Builder warrants that the work performed and material supplied by the Builder in performing any reconstruction work to the Hulks (except as to materials furnished, manufactured or supplied by Lessee or a party specified by Lessee other than Builder) will be free from defects in material and workmanship under normal use and service. The Builder's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such work or material which shall, within one year after the Builder shall have made delivery of such defective repairs or material, be returned to such place as the Builder shall designate with transportation charges prepaid and which the Builder's examination shall disclose to its reasonable satisfaction to have been defective in normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXTENDING BEYOND THE DESCRIPTION IN THE SPECIFICATIONS FOR SUCH RECONSTRUCTION OR MATERIALS AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER; and the Builder shall not be liable to any party hereto for any indirect, special or consequential damages resulting from any defects in material or workmanship. The Builder agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action

hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Vendee, every claim, right and cause of action which the Builder has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks and the Builder agrees to execute and deliver to the Vendor and the Vendee all and every such further assurance as may be reasonably requested more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

Except in cases of articles or materials specified by the Vendee or by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendor and the Vendee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Vendee (i) because of the use by the Builder in or about or resulting from the reconstruction of the Hulks, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right or (ii) arising out of any accident or tort in connection with the reconstruction, operation, use, condition, possession or storage by the Builder of any of the Hulks or any unit of the Equipment resulting in damage to property or injury or death to any person. The Vendor or the Vendee will give notice to the Builder of any claim known to it from which liability may be charged against the Builder under this paragraph.

The warranties and indemnities contained or referred to in this Article 12 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessor, lessee, assignee or transferee of this Agreement or of any Hulks reconstructed by the Builder hereunder.

**ARTICLE 13. Assignments.** The Vendee will not (a) except as provided in Article 10 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 the Lessee) 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 the 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 reconstruct and to deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 12 hereof, or relieve the Vendee of its respective obligations to the Vendor contained in Articles 2, 3, 4, 5, 6 and 12 hereof, Schedule A hereto and this Article 13, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, 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 and the Lessee, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 14. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for fifteen (15) days; or

(b) The Vendee 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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition 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), all the obligations of the Lessee under the Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee under the Lease), 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), all the obligations of

the Lessee under the Lease shall not have been duly assumed in writing, pursuant to the court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such 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 thirty (30) days after such appointment, if any, or sixty (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; or

(f) An Event of Default shall occur under the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 10 hereof, cause the Lease immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of such 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 wherever situated. The Vendee 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.

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 Lease by notice to the Vendee and the Lessee 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 Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed 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 15. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 10 hereof, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Lessee shall (subject to the rights of the Lessee set forth in Article 10 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement

between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance hereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 15 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of such 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; provided, further, that if the Vendee, the Lessee or any other person notified under the terms of this paragraph object in writing to the Vendor within thirty (30) days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other

manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 15.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 10 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with interest thereof accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Salt Lake City, Utah, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a

private sale, it shall be subject to the rights of the Vendee and the Lessee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted 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.

If, after applying all sums of money realized by the Vendor after the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee. 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 the last paragraph of Paragraph 4, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will accordingly limit its execution of such judgment to amounts payable pursuant to the limitations set forth in the last paragraph of Paragraph 4.

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.

The foregoing provisions of this Article 15 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 16. 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, any conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Lessee 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 to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, and 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 17. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or

supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor, for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 18. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto.

ARTICLE 19. Article Headings: Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including any Schedule hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Builder, and the Vendee.

ARTICLE 20. 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 or Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Trust Department, Corporate Division
- (b) To the Builder, at 2200 East Devon Avenue, Des Plaines, Illinois 60018;
- (c) To the Lessee, at 526 Mission Street, San Francisco, California 94105, Attention: Vice-President, Finance;

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

ARTICLE 21. Immunities: Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholders, director or officer, past, present or future, of the Vendor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee to all persons including, but not limited to, the Vendor under the first paragraph of Article 6 and under Articles 5, 7, 8, 9, 11, 12 and 17 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 14 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Beneficiary or on account of any representation, undertaking or

agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated 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 acknowledgments hereto annexed.

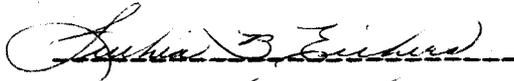
IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed all as of the date first above written.

FIRST SECURITY BANK OF UTAH, N.A.,  
As Agent

(SEAL)

By   
Authorized Officer

Attest:



Title Trust Administrator

STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this 22 day of April, 1976,  
before me personally appeared Borset S. Clark, to me  
personally known, who, being by me duly sworn, says that he  
is an Authorized Officer of First Security Bank of Utah,  
N.A., that the seal affixed to the foregoing instrument is  
the corporate seal of said association and that said  
instrument was signed and sealed on behalf of said  
association by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was a free act and deed of said association.

Borden J. Ober  
Notary Public

[NOTARIAL SEAL]

My commission expires:

November 18, 1979

STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this 22 day of April, 1976,  
before me personally appeared Robert S. Clark, to me  
personally known, who, being by me duly sworn, says that he  
is an Authorized Officer of First Security Bank of Utah,  
N.A., that the seal affixed to the foregoing instrument is  
the corporate seal of said association and that said  
instrument was signed and sealed on behalf of said  
association by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was a free act and deed of said association.

Barbara J. Ober  
Notary Public

[NOTARIAL SEAL]

My commission expires:

November 18, 1979

STATE OF CALIFORNIA )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the \_\_\_\_\_ of The Western Pacific Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said corporation.

-----  
Notary Public

[NOTARIAL SEAL]

My commission expires:



EXHIBIT A  
TO FINANCE AGREEMENT

RECONSTRUCTION  
AND  
CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1976

Among

FIRST SECURITY BANK OF UTAH, N.A.,

as Agent,

U.S. RAILWAY MFG. CO.,

FIRST SECURITY BANK OF UTAH, N.A.,

as Trustee

and joined for purposes of  
Articles 1, 4, 13 and 15 by

THE WESTERN PACIFIC RAILROAD COMPANY

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of March 1, 1976, among FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), U.S. RAILWAY MFG. CO. (hereinafter called the Builder), FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of March 1, 1976 (hereinafter called the Trust Agreement), with SAN FRANCISCO FINANCIAL #II (hereinafter called the Beneficiary), and for purposes of Articles 1, 4, 13 and 15 hereof, THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee).

The Vendee proposes to acquire all right, title and interest in certain used railroad equipment (hereinafter called the Hulks) from the Lessee pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of March 1, 1976, in substantially the form of Exhibit I hereto.

Pursuant to this Agreement, the Hulks will then be delivered to the Builder who will cause the Hulks to be reconstructed at the direction of, and in accordance with specifications of, the Vendee by adding to, and reconstructing the Hulks with, the Reconstruction (as defined in the Finance Agreement).

The Vendor will then acquire a security interest in the Hulks pursuant to this Agreement for the purpose of further securing its interest in the Reconstruction and pursuant hereto will sell its interest in the Reconstruction to the Vendee and the Vendee has agreed to purchase such interest in the Reconstruction (the Hulks and Reconstruction described in Schedule A hereto when referred to together being hereinafter called the Equipment).

The Vendee and the Lessee are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit II hereto, pursuant to which the Vendee is leasing the Equipment to the Lessee, subject to this Agreement, and the Vendee is assigning for security purposes its rights in, to and under the Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Exhibit III hereto. The rights

acquired by the Vendor pursuant to this Reconstruction and Conditional Sale Agreement shall be and are acquired for the benefit of the Investors identified in the Finance Agreement for whom the Vendor is acting as Agent pursuant to the terms of such Finance Agreement.

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

ARTICLE 1. Reconstruction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed as described in Schedule A hereto by adding to, and reconstructing the Hulks with, the Reconstruction and will deliver the Equipment to the Vendee and the Vendee will accept delivery of and pay for the Hulks and the Reconstruction as hereinafter provided, each unit of which shall be standard guage railroad equipment reconstructed in accordance with the specifications of the Vendee referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the parties hereto (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Builder warrants to the Vendor and the Vendee that the design, quality and component parts of the Equipment will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement. This Agreement supersedes The Western Pacific Railroad Company Purchase Order Number 31313 with respect to the reconstruction of the Hulks.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at such point or points within the United States of America specified in Schedule A hereto (or if Schedule A hereto does not specify a place or places, at the place or places designated from time to time by the Vendee) on or prior to July 26, 1976, freight charges, if any, prepaid; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement, the Lease and the Lease Assignment have been filed pursuant to Section 20c of the

Interstate Commerce Act. The Builder agrees not to accept for reconstruction, nor to commence any reconstruction of, any Hulk if the Builder does not reasonably anticipate that such Hulk will be fully reconstructed within fifteen (15) days following such commencement of reconstruction and in any case prior to July 26, 1976.

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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, but subject to the Hulk Purchase Agreement, the Vendor and the Vendee shall be relieved of their respective obligations to purchase and pay for any Hulk and Reconstruction not delivered and accepted on or prior to the earlier of (1) July 26, 1976 or (2) fifteen (15) days after the date on which the Builder receives written notice from the Vendee, the Vendor or the Beneficiary (a) of the occurrence of any event of default as defined in Article 14 hereof or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 14 hereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default hereunder, shall have occurred, or (b) that any of the conditions contained in Article 4 hereof have not been met or waived.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Hulks in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee 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 (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of delivery in the form of Exhibit IV hereto (hereinafter called the Certificate of Delivery) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 8 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 12 hereof. The Builder will give written notice to the Vendee of the Railroad Road Numbers of the last four (4) Hulks which it reconstructs for the Vendee.

ARTICLE 3. Grant of Security Interest, and Title to the Equipment. The Vendee hereby grants to the Vendor a security interest in the Hulks delivered to the Builder hereunder for reconstruction and the Vendor shall retain such interest in the Hulks during the entire period of reconstruction and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Reconstruction and shall have kept and performed all its agreements herein contained in respect thereof, 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 and the Lessee as provided in this Agreement and the Lease. Any and all additions to Hulks, and any and all parts installed on and additions and replacements made to any Hulk prior to delivery and acceptance hereunder or pursuant to Section 11(ii) of the Lease shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, 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, will (a) execute and deliver to the Vendee a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee, free of all

claims, rights, liens, security interest and other encumbrances created or retained hereby, (b) execute and deliver to the Vendee 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 such Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 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, forfeiture or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any such 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 ten days after written demand by the Vendee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment consist of the following: Base Reconstruction Cost and the sum per Hulk payable by Vendee to Lessee under the Hulk Purchase Agreement (hereinafter called the Hulk Cost) as both are set forth in Schedule A hereto. Such Base Reconstruction Cost is subject to such increase or decrease as is agreed to by the Builder, the Vendor, the Vendee and the Lessee; provided, however, that no such increase shall exceed ten percent (10%) of such Base Reconstruction Cost unless the Vendor shall otherwise agree. The term "Purchase Price" as used herein shall mean the Base Reconstruction Cost as so increased or decreased plus the Hulk Cost.

If on any Closing Date (as hereinafter defined in this Article) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Schedule A hereto (or such higher amount as the Vendee and the Vendor may agree to), the Vendor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Schedule A hereto (or such higher amounts as aforesaid).

The Equipment shall be settled for in four (4) groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean the following dates (or such other dates as the Builder and the Vendee may agree to), as to the following cumulative maximum number of units:

April 29, 1976	61
May 27, 1976	93
June 30, 1976	134
July 26, 1976	134

July 26, 1976 is herein called the Cut-Off Date.

On the Closing Date with respect to each Group, the Vendee shall pay to the Vendor an amount equal to the Hulk Cost for such Group and such amount shall be paid by the Vendor, on behalf of the Vendee, to the Lessee.

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, as follows:

(a) On the Closing Date with respect to each Group an amount equal to the difference between 24.7% of the aggregate Purchase Price of such Group and the Hulk Cost of such Group; and

(b) In 24 consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph and with respect to the immediately preceding paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 26 and July 26, commencing January 26, 1977, to and including July 26, 1988 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. (The term "business days" as used herein means calendar days,

excluding Saturdays, Sundays and any other day on which banking institutions in Salt Lake City, Utah are authorized or obligated to remain closed.) The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of nine percent (9%) per annum and such interest shall be payable, to the extent accrued, on July 26, 1976, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the aggregate of principal and interest payable on each Payment Date shall be substantially equal and such installments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of ten percent (10%) per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payment 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 6 hereof, the Vendee shall not have the privilege of prepayment any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

On the Closing Date with respect to each Group, an amount equal to the Base Reconstruction Cost of such Group shall be paid in immediately available funds by the Vendor to the Builder and an amount equal to the Hulk Cost of such Group shall be paid in immediately available funds by the Vendor to the Lessee (as seller of the Hulks prior to reconstruction), from the proceeds of the amount payable by the Vendee pursuant to the fourth paragraph of this Article 4 and clause (a) of the fifth paragraph of this Article 4 and the amounts available to the Vendor under and pursuant to the Finance Agreement; provided, that there shall have

been delivered to the Vendor on such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A Certificate or Certificates of Delivery with respect to the units of the Equipment in such Group as contemplated by Article 2 hereof and Section 2 of the Lease;

(b) A certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units hereunder and under the Lease;

(c) An invoice of the Builder pertaining to the Base Reconstruction Cost of the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) An opinion of Messrs. Brobeck, Phleger and Harrison, who are acting as special counsel for the Vendor and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) this Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the Vendor is vested with all the rights, titles, interests, powers and privileges purported to be retained by or granted to it hereunder, (iv) security interest to the units of the Equipment is validly vested in the Vendor and such units, at the time of delivery thereof to the Vendee hereunder, were free from all claims, liens, security interests and other encumbrances (other than those created by the Reconstruction and Conditional Sale Agreement and the rights of the Lessee under the Lease and the beneficial ownership of the Vendee in and to the Hulks and the Reconstruction), (v) no approval of the Interstate

Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, this Reconstruction and Conditional Sale Agreement or the Lease, or if any such authority is necessary, it has been obtained, (vi) this Reconstruction and Conditional Sale Agreement, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor in any state of the United States of America or the District of Columbia, and (vii) registration of this Reconstruction and Conditional Sale Agreement or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Vendor or such Investors;

(e) Certificate of the Vendee, dated as of such Closing Date, to the effect that (i) this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms and (ii) no approval is required of any governmental authority for the entering into or performance of this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease by the Vendee;

(f) An opinion of counsel for the Lessee, dated as of such Closing Date and addressed to the Vendee as well as the Vendor, to the effect set forth in clauses (v), (vi) and (vii) of subparagraph (d) above and as specified in Section 4 of the Lease, and stating that the Lessee is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and that this Agreement, the Lessee's Consent and Agreement and the Purchase Agreement have been duly

authorized, executed and delivered by the Lessee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments, binding upon the Lessee and enforceable against the Lessee in accordance with their terms;

(g) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect that upon payment to Builder for the reconstruction neither the Builder nor any party or person claiming by, through or under the Builder will have any claim, lien or interest in or against the Equipment by reason of the Builder's reconstruction work thereon and that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of this Agreement by the Builder, or if necessary, it has been obtained, and stating that (i) the Builder is duly organized and existing in good standing under the laws of its jurisdiction of formation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder, and assuming due authorization, execution, and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the builder in accordance with its terms;

(h) A receipt from the Lessee for any payment required to be made on such Closing Date to the Lessee with respect to the hulks, unless such payment is made by the Vendor with funds furnished to it for that purpose by the Vendee;

(i) A certificate of an officer of the Lessee to the effect that the Lessee is not in default under, and to its knowledge, there is no event which, with the passage of time would place the Lessee in default under, the Lease or the Lessee's Consent and Agreement thereof or the Purchase Agreement;

(j) An opinion of counsel for the Beneficiary stating that the Beneficiary is a duly organized and existing partnership under the laws of the State of Utah and has the power and authority to control its properties and carry on its business as now conducted and that the Trust Agreement has been duly authorized,

executed and delivered by the Beneficiary, and, assuming due authorization, execution and delivery by the Beneficiary and the Trustee, is a legal and valid instrument, binding upon the Beneficiary and enforceable against the Beneficiary in accordance with its terms; and

(k) Such other instruments, documents and assurances as may be requested by Messrs. Brobeck, Phleger and Harrison, the Vendor, or any of the Investors.

In giving the opinions specified in subparagraphs (d), (f), (g) and (j) above, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (i) as to authorization, execution and delivery by the Vendee of the documents executed by the Vendee on the Certificate of the Vendee, (ii) as to the authorization, execution and delivery by the Builder and the Lessee, and title to the Equipment at the time of delivery thereof hereunder on the opinion of counsel for the Lessee and the opinion of counsel for the Builder, respectively, and (iii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than California or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Lessee as to such matter.

The obligation of the Vendor hereunder to make payment for any of the Reconstruction is hereby expressly conditioned upon the Vendor having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to the fourth paragraph of this Article 4 and subparagraph (a) of the fifth paragraph of this Article 4. The Vendor shall not be obligated to make any abovementioned payment at any time after the earlier of the dates specified in the third paragraph of Article 2 hereof. In the event that the Vendor shall not make any such payment, the Vendor shall release to the Builder and the Vendee, as their interests may appear, without recourse to the Vendor, all right, title and

interest of the Vendor, if any, in and to the Hulks or the Reconstruction with respect to which payment has not been made by the Vendor. Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks or delivery of the Equipment.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 14 and 15 hereof), it is understood and agreed by the Vendor that the liability of the Vendee and the Beneficiary (for which the Vendee is acting as trustee) for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to Article 18 hereof and the fourth paragraph of this Article and subparagraph (a) of the fifth 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", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee and the Beneficiary for which the Vendee is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee and the Beneficiary (i) make no representation or warranty, and are not responsible for, the due execution, validity, sufficiency or enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 14 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 of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under Section 16 of the Lease and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) 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 due and payable on, or within six (6) days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease 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), (b) and (c) which were 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 due and payable on, or within six (6) days after, the date on which interest is payable on the Conditional Sale Indebtedness corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 15 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, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

ARTICLE 5. 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 net 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 for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the interest 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 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; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance: Casualty Occurrences.

The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out beyond repair, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (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 informed in regard thereto. Provided the Lessee has not elected to provide a replacement unit in accordance with subparagraph (ii) of Section 11 of the Lease, on the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. 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, calculated as provided in the fourth paragraph of Article 4 hereof.

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 property 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, 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 thereof remaining unpaid on the date as of which such Casualty Value shall be determined, plus nine percent (9%) interest per annum accrued thereon but unpaid to the date of payment. 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.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments 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 damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 7. Reports and Inspections. On or before August 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding year (or since the date of this Agreement in the case of the first such statement) 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 8 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and all records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 8. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A or 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" 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 markings shall have been made thereon and will replace or will cause to be replaced promptly any such 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 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 Lessee or its affiliates.

#### ARTICLE 9. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee 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 lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, and Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require

any alteration, replacement or addition of 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 10. 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 Vendor 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 lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Lessee shall not be in default under the Lease or otherwise, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the Lease. 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 Lease and until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

The Vendee may also lease the Equipment to any other railroad company under conditions substantially similar to the conditions of the Lease with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to 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 (iii) a copy of such lease shall be furnished

to the Vendor. Disposal by the Lessee of any unit of Equipment pursuant to the Lease after a Casualty Occurrence shall not be deemed to be a breach of this Article 10.

ARTICLE 11. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its 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.

ARTICLE 12. 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 its 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 the Vendor retains an interest in the Equipment or the transfer of Vendor's interest in the Equipment by the Vendor pursuant

to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant made 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, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for the 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.

THE VENDOR MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER.

The Builder warrants that the work performed and material supplied by the Builder in performing any reconstruction work to the Hulks (except as to materials furnished, manufactured or supplied by Lessee or a party specified by Lessee other than Builder) will be free from defects in material and workmanship under normal use and service. The Builder's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such work or material which shall, within one year after the Builder shall have made delivery of such defective repairs or material, be returned to such place as the Builder shall designate with transportation charges prepaid and which the Builder's examination shall disclose to its reasonable satisfaction to have been defective in normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXTENDING BEYOND THE DESCRIPTION IN THE SPECIFICATIONS FOR SUCH RECONSTRUCTION OR MATERIALS AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER; and the Builder shall not be liable to any party hereto for any indirect, special or consequential damages resulting from any defects in material or workmanship. The Builder agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action

hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Vendee, every claim, right and cause of action which the Builder has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks and the Builder agrees to execute and deliver to the Vendor and the Vendee all and every such further assurance as may be reasonably requested more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

Except in cases of articles or materials specified by the Vendee or by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendor and the Vendee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Vendee (i) because of the use by the Builder in or about or resulting from the reconstruction of the Hulks, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right or (ii) arising out of any accident or tort in connection with the reconstruction, operation, use, condition, possession or storage by the Builder of any of the Hulks or any unit of the Equipment resulting in damage to property or injury or death to any person. The Vendor or the Vendee will give notice to the Builder of any claim known to it from which liability may be charged against the Builder under this paragraph.

The warranties and indemnities contained or referred to in this Article 12 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessor, lessee, assignee or transferee of this Agreement or of any Hulks reconstructed by the Builder hereunder.

ARTICLE 13. Assignments. The Vendee will not (a) except as provided in Article 10 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 the Lessee) 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 the 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 reconstruct and to deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 12 hereof, or relieve the Vendee of its respective obligations to the Vendor contained in Articles 2, 3, 4, 5, 6 and 12 hereof, Schedule A hereto and this Article 13, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, 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 and the Lessee, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 14. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for fifteen (15) days; or

(b) The Vendee 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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the lessee and, unless such petition 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), all the obligations of the Lessee under the Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee under the Lease), 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), all the obligations of

the Lessee under the Lease shall not have been duly assumed in writing, pursuant to the court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such 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 thirty (30) days after such appointment, if any, or sixty (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; or

(f) An Event of Default shall occur under the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 10 hereof, cause the Lease immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of such 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 wherever situated. The Vendee 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.

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 Lease by notice to the Vendee and the Lessee 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 Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed 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 15. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 10 hereof, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Lessee shall (subject to the rights of the Lessee set forth in Article 10 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement

between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance hereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 15 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of such 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; provided, further, that if the Vendee, the Lessee or any other person notified under the terms of this paragraph object in writing to the Vendor within thirty (30) days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other

manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 15.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 10 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with interest thereof accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Salt Lake City, Utah, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a

private sale, it shall be subject to the rights of the Vendee and the Lessee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted 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.

If, after applying all sums of money realized by the Vendor after the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee. 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 the last paragraph of Paragraph 4, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will accordingly limit its execution of such judgment to amounts payable pursuant to the limitations set forth in the last paragraph of Paragraph 4.

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.

The foregoing provisions of this Article 15 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 16. 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, any conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Lessee 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 to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, and 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 17. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or

supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor, for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 18. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto.

ARTICLE 19. Article Headings: Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including any Schedule hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Builder, and the Vendee.

ARTICLE 20. 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 or Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Trust Department, Corporate Division
- (b) To the Builder, at 2200 East Devon Avenue, Des Plaines, Illinois 60018;
- (c) To the Lessee, at 526 Mission Street, San Francisco, California 94105, Attention: Vice-President, Finance;

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

ARTICLE 21. Immunities: Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholders, director or officer, past, present or future, of the Vendor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee to all persons including, but not limited to, the Vendor under the first paragraph of Article 6 and under Articles 5, 7, 8, 9, 11, 12 and 17 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 14 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Beneficiary or on account of any representation, undertaking or

agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated 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 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.

FIRST SECURITY BANK OF UTAH, N.A.,  
As Agent

[SEAL]

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Title \_\_\_\_\_

U.S. RAILWAY MFG. CO.

[SEAL]

By Ralph E Bell  
Vice President

Attest:

[Signature]

Title Asst. Secretary

FIRST SECURITY BANK OF UTAH, N.A.,  
Not in its individual capacity,  
but solely as Trustee

[SEAL]

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_

Title \_\_\_\_\_

THE WESTERN PACIFIC RAILROAD COMPANY,  
Joining the Agreement for purposes of  
Articles 1, 4, 13 and 15

[SEAL]

By \_\_\_\_\_

Attest:

\_\_\_\_\_

Title \_\_\_\_\_

Schedule A to Reconstruction and  
Conditional Sale Agreement

<u>Quantity</u>	<u>Designation</u>	<u>Railroad Road Numbers Prior to Reconstruction</u>	<u>Railroad Road Numbers Following Reconstruction --(inclusive)--</u>		
134	50' 6" 70 Ton Box Car	WP 56176-56325	WP 64801-64934		
 Base Reconstruction Cost		Sum Payable to Lessee Under Hulk Purchase Agreement (Hulk Cost)			
<u>Per Unit</u>	<u>Total</u>	<u>Per Unit</u>	<u>Total</u>	<u>Base Price Per Unit</u>	<u>Maximum Purchase Price</u>
\$24,990.93	\$3,348,784.62	\$7,000	\$938,000	\$31,990.93	\$4,355,000

Specifications -- As set forth in Western Pacific Railroad Company Purchase Order Number 31313, referring to Builders Quotation of December 4, 1975, Estimate 600, Builders letter of January 5, 1976 and Western Pacific Specification C-2-1975.

Point of Delivery of Equipment to Vendee: FOT Builder's reconstruction facility at Washington, Indiana.



STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is an Authorized Officer of First Security Bank of Utah,  
N.A., that the seal affixed to the foregoing instrument is  
the corporate seal of said association and that said  
instrument was signed and sealed on behalf of said  
association by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was a free act and deed of said association.

-----  
Notary Public

(NOTARIAL SEAL)

My commission expires:

STATE OF CALIFORNIA )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is the \_\_\_\_\_ of The Western Pacific Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said corporation.

-----  
Notary Public

(NOTARIAL SEAL)

My commission expires:

STATE OF Illinois )  
 ) SS.:  
COUNTY OF Cook . )

On this 22nd day of April, 1976, before me personally appeared Ralph E. Bell, to me personally known who, being by me duly sworn, says that he is the Vice President of U.S. Railway Mfg. Co., that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said corporation.

Elfrida M. Rieger  
Notary Public

[NOTARIAL SEAL]

My commission expires: My Commission Expires June 28, 1978

EXHIBIT A  
TO FINANCE AGREEMENT

RECONSTRUCTION  
AND  
CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1976

Among

FIRST SECURITY BANK OF UTAH, N.A.,

as Agent,

U.S. RAILWAY MFG. CO.,

FIRST SECURITY BANK OF UTAH, N.A.,

as Trustee

and joined for purposes of  
Articles 1, 4, 13 and 15 by

THE WESTERN PACIFIC RAILROAD COMPANY

RECONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of March 1, 1976, among FIRST SECURITY BANK OF UTAH, N.A. (hereinafter called the Vendor), as Agent under a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), U.S. RAILWAY MFG. CO. (hereinafter called the Builder), FIRST SECURITY BANK OF UTAH, N.A., not in its individual capacity but solely as Trustee (hereinafter called the Vendee) under a Trust Agreement dated as of March 1, 1976 (hereinafter called the Trust Agreement), with SAN FRANCISCO FINANCIAL #II (hereinafter called the Beneficiary), and for purposes of Articles 1, 4, 13 and 15 hereof, THE WESTERN PACIFIC RAILROAD COMPANY (hereinafter called the Lessee).

The Vendee proposes to acquire all right, title and interest in certain used railroad equipment (hereinafter called the Hulks) from the Lessee pursuant to a Hulk Purchase Agreement (hereinafter called the Hulk Purchase Agreement) dated as of March 1, 1976, in substantially the form of Exhibit I hereto.

Pursuant to this Agreement, the Hulks will then be delivered to the Builder who will cause the Hulks to be reconstructed at the direction of, and in accordance with specifications of, the Vendee by adding to, and reconstructing the Hulks with, the Reconstruction (as defined in the Finance Agreement).

The Vendor will then acquire a security interest in the Hulks pursuant to this Agreement for the purpose of further securing its interest in the Reconstruction and pursuant hereto will sell its interest in the Reconstruction to the Vendee and the Vendee has agreed to purchase such interest in the Reconstruction (the Hulks and Reconstruction described in Schedule A hereto when referred to together being hereinafter called the Equipment).

The Vendee and the Lessee are entering into a Lease of Railroad Equipment, dated as of the date hereof (hereinafter called the Lease), substantially in the form of Exhibit II hereto, pursuant to which the Vendee is leasing the Equipment to the Lessee, subject to this Agreement, and the Vendee is assigning for security purposes its rights in, to and under the Lease to the Vendor pursuant to an Assignment of Lease and Agreement dated as of the date hereof (hereinafter called the Lease Assignment), substantially in the form of Exhibit III hereto. The rights

acquired by the Vendor pursuant to this Reconstruction and Conditional Sale Agreement shall be and are acquired for the benefit of the Investors identified in the Finance Agreement for whom the Vendor is acting as Agent pursuant to the terms of such Finance Agreement.

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

ARTICLE 1. Reconstruction and Sale. Pursuant to this Agreement, the Builder will cause the Hulks to be reconstructed as described in Schedule A hereto by adding to, and reconstructing the Hulks with, the Reconstruction and will deliver the Equipment to the Vendee and the Vendee will accept delivery of and pay for the Hulks and the Reconstruction as hereinafter provided, each unit of which shall be standard gauge railroad equipment reconstructed in accordance with the specifications of the Vendee referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing by the parties hereto (which specifications and modifications, if any, are by reference made a part of this Agreement as fully as though expressly set forth herein and are hereinafter called the Specifications). The Builder warrants to the Vendor and the Vendee that the design, quality and component parts of the Equipment will conform, on the date of delivery of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement. This Agreement supersedes The Western Pacific Railroad Company Purchase Order Number 31313 with respect to the reconstruction of the Hulks.

ARTICLE 2. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at such point or points within the United States of America specified in Schedule A hereto (or if Schedule A hereto does not specify a place or places, at the place or places designated from time to time by the Vendee) on or prior to July 26, 1976, freight charges, if any, prepaid; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement, the Lease and the Lease Assignment have been filed pursuant to Section 20c of the

Interstate Commerce Act. The Builder agrees not to accept for reconstruction, nor to commence any reconstruction of, any Hulk if the Builder does not reasonably anticipate that such Hulk will be fully reconstructed within fifteen (15) days following such commencement of reconstruction and in any case prior to July 26, 1976.

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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, but subject to the Hulk Purchase Agreement, the Vendor and the Vendee shall be relieved of their respective obligations to purchase and pay for any Hulk and Reconstruction not delivered and accepted on or prior to the earlier of (1) July 26, 1976 or (2) fifteen (15) days after the date on which the Builder receives written notice from the Vendee, the Vendor or the Beneficiary (a) of the occurrence of any event of default as defined in Article 14 hereof or any event (including the commencement of any proceeding or the filing of any petition of the nature specified in subparagraphs (c) and (d) of Article 14 hereof) which, with lapse of time, failure to take affirmative action and/or demand, could constitute an event of default hereunder, shall have occurred, or (b) that any of the conditions contained in Article 4 hereof have not been met or waived.

During reconstruction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the reconstruction of the Hulks in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Vendee 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 (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of delivery in the form of Exhibit IV hereto (hereinafter called the Certificate of Delivery) stating that such unit or units have been inspected and accepted on behalf of the Vendee and are marked in accordance with Article 8 hereof; provided, however, that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 12 hereof. The Builder will give written notice to the Vendee of the Railroad Road Numbers of the last four (4) Hulks which it reconstructs for the Vendee.

ARTICLE 3. Grant of Security Interest, and Title to the Equipment. The Vendee hereby grants to the Vendor a security interest in the Hulks delivered to the Builder hereunder for reconstruction and the Vendor shall retain such interest in the Hulks during the entire period of reconstruction and thereafter in the Equipment until the Vendee shall have made all its payments under this Agreement in respect of the Reconstruction and shall have kept and performed all its agreements herein contained in respect thereof, 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 and the Lessee as provided in this Agreement and the Lease. Any and all additions to Hulks, and any and all parts installed on and additions and replacements made to any Hulk prior to delivery and acceptance hereunder or pursuant to Section 11(ii) of the Lease shall constitute accessions thereto and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 6 hereof, when and only when the Vendor shall have been paid the full Conditional Sale Indebtedness, 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, will (a) execute and deliver to the Vendee a bill or bills of sale for the Equipment releasing its security interest therein to the Vendee, free of all

claims, rights, liens, security interest and other encumbrances created or retained hereby, (b) execute and deliver to the Vendee 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 such Equipment and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 6 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, forfeiture or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any such 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 ten days after written demand by the Vendee.

ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment consist of the following: Base Reconstruction Cost and the sum per Hulk payable by Vendee to Lessee under the Hulk Purchase Agreement (hereinafter called the Hulk Cost) as both are set forth in Schedule A hereto. Such Base Reconstruction Cost is subject to such increase or decrease as is agreed to by the Builder, the Vendor, the Vendee and the Lessee; provided, however, that no such increase shall exceed ten percent (10%) of such Base Reconstruction Cost unless the Vendor shall otherwise agree. The term "Purchase Price" as used herein shall mean the Base Reconstruction Cost as so increased or decreased plus the Hulk Cost.

If on any Closing Date (as hereinafter defined in this Article) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Schedule A hereto (or such higher amount as the Vendee and the Vendor may agree to), the Vendor will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Purchase Price specified in Schedule A hereto (or such higher amounts as aforesaid).

The Equipment shall be settled for in four (4) groups of units of the Equipment delivered to and accepted by the Vendee (each such group being hereinafter called a Group). The term "Closing Date" with respect to any Group shall mean the following dates (or such other dates as the Builder and the Vendee may agree to), as to the following cumulative maximum number of units:

April 29, 1976	61
May 27, 1976	93
June 30, 1976	134
July 26, 1976	134

July 26, 1976 is herein called the Cut-Off Date.

On the Closing Date with respect to each Group, the Vendee shall pay to the Vendor an amount equal to the Hulk Cost for such Group and such amount shall be paid by the Vendor, on behalf of the Vendee, to the Lessee.

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, as follows:

(a) On the Closing Date with respect to each Group an amount equal to the difference between 24.7% of the aggregate Purchase Price of such Group and the Hulk Cost of such Group; and

(b) In 24 consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph and with respect to the immediately preceding paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (herein called the Conditional Sale Indebtedness) shall be payable on each January 26 and July 26, commencing January 26, 1977, to and including July 26, 1988 (or if any such date is not a business day, on the next succeeding business day), each such date being hereinafter called a Payment Date. (The term "business days" as used herein means calendar days,

excluding Saturdays, Sundays and any other day on which banking institutions in Salt Lake City, Utah are authorized or obligated to remain closed.) The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of nine percent (9%) per annum and such interest shall be payable, to the extent accrued, on July 26, 1976, and on each Payment Date thereafter. The installments of principal payable on each Payment Date shall be calculated so that the aggregate of principal and interest payable on each Payment Date shall be substantially equal and such installments of principal shall completely amortize the Conditional Sale Indebtedness. The Vendee will furnish to the Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.

The Vendee will pay interest, to the extent legally enforceable, at the rate of ten percent (10%) per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amounts as shall be legally enforceable, anything herein to the contrary notwithstanding.

All payment 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 6 hereof, the Vendee shall not have the privilege of prepayment any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

On the Closing Date with respect to each Group, an amount equal to the Base Reconstruction Cost of such Group shall be paid in immediately available funds by the Vendor to the Builder and an amount equal to the Hulk Cost of such Group shall be paid in immediately available funds by the Vendor to the Lessee (as seller of the Hulks prior to reconstruction), from the proceeds of the amount payable by the Vendee pursuant to the fourth paragraph of this Article 4 and clause (a) of the fifth paragraph of this Article 4 and the amounts available to the Vendor under and pursuant to the Finance Agreement; provided, that there shall have

been delivered to the Vendor on such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A Certificate or Certificates of Delivery with respect to the units of the Equipment in such Group as contemplated by Article 2 hereof and Section 2 of the Lease;

(b) A certificate of an officer of the Lessee to the effect that none of the units of the Equipment was placed in the service of the Lessee or otherwise was used by the Lessee prior to delivery and acceptance of such units hereunder and under the Lease;

(c) An invoice of the Builder pertaining to the Base Reconstruction Cost of the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Vendee and the Lessee as to their approval thereof;

(d) An opinion of Messrs. Brobeck, Phleger and Harrison, who are acting as special counsel for the Vendor and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) this Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) the Vendor is vested with all the rights, titles, interests, powers and privileges purported to be retained by or granted to it hereunder, (iv) security interest to the units of the Equipment is validly vested in the Vendor and such units, at the time of delivery thereof to the Vendee hereunder, were free from all claims, liens, security interests and other encumbrances (other than those created by the Reconstruction and Conditional Sale Agreement and the rights of the Lessee under the Lease and the beneficial ownership of the Vendee in and to the Hulks and the Reconstruction), (v) no approval of the Interstate

Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, this Reconstruction and Conditional Sale Agreement or the Lease, or if any such authority is necessary, it has been obtained, (vi) this Reconstruction and Conditional Sale Agreement, the Lease and the Lease Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Vendor in any state of the United States of America or the District of Columbia, and (vii) registration of this Reconstruction and Conditional Sale Agreement or the certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Vendor or such Investors;

(e) Certificate of the Vendee, dated as of such Closing Date, to the effect that (i) this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease have been duly authorized, executed and delivered by the Vendee and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments binding upon the Vendee and enforceable against the Vendee in accordance with their terms and (ii) no approval is required of any governmental authority for the entering into or performance of this Reconstruction and Conditional Sale Agreement, the Finance Agreement and the Lease by the Vendee;

(f) An opinion of counsel for the Lessee, dated as of such Closing Date and addressed to the Vendee as well as the Vendor, to the effect set forth in clauses (v), (vi) and (vii) of subparagraph (d) above and as specified in Section 4 of the Lease, and stating that the Lessee is a duly organized and existing corporation in good standing under the laws of the jurisdiction of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and that this Agreement, the Lessee's Consent and Agreement and the Purchase Agreement have been duly

authorized, executed and delivered by the Lessee, and, assuming due authorization, execution and delivery by the other parties thereto, are legal and valid instruments, binding upon the Lessee and enforceable against the Lessee in accordance with their terms;

(g) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect that upon payment to Builder for the reconstruction neither the Builder nor any party or person claiming by, through or under the Builder will have any claim, lien or interest in or against the Equipment by reason of the Builder's reconstruction work thereon and that no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of this Agreement by the Builder, or if necessary, it has been obtained, and stating that (i) the Builder is duly organized and existing in good standing under the laws of its jurisdiction of formation and has the power and authority to own its properties and to carry on its business as now conducted, and (ii) the Reconstruction and Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder, and assuming due authorization, execution, and delivery by the other parties thereto, is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms;

(h) A receipt from the Lessee for any payment required to be made on such Closing Date to the Lessee with respect to the Hulks, unless such payment is made by the Vendor with funds furnished to it for that purpose by the Vendee;

(i) A certificate of an officer of the Lessee to the effect that the Lessee is not in default under, and to its knowledge, there is no event which, with the passage of time would place the Lessee in default under, the Lease or the Lessee's Consent and Agreement thereof or the Purchase Agreement;

(j) An opinion of counsel for the Beneficiary stating that the Beneficiary is a duly organized and existing partnership under the laws of the State of Utah and has the power and authority to control its properties and carry on its business as now conducted and that the Trust Agreement has been duly authorized,

executed and delivered by the Beneficiary, and, assuming due authorization, execution and delivery by the Beneficiary and the Trustee, is a legal and valid instrument, binding upon the Beneficiary and enforceable against the Beneficiary in accordance with its terms; and

(k) Such other instruments, documents and assurances as may be requested by Messrs. Brobeck, Phleger and Harrison, the Vendor, or any of the Investors.

In giving the opinions specified in subparagraphs (d), (f), (g) and (j) above, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely (i) as to authorization, execution and delivery by the Vendee of the documents executed by the Vendee on the Certificate of the Vendee, (ii) as to the authorization, execution and delivery by the Builder and the Lessee, and title to the Equipment at the time of delivery thereof hereunder on the opinion of counsel for the Lessee and the opinion of counsel for the Builder, respectively, and (iii) to the extent appropriate, as to any matter governed by the law of any jurisdiction other than California or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Lessee as to such matter.

The obligation of the Vendor hereunder to make payment for any of the Reconstruction is hereby expressly conditioned upon the Vendor having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available to make such payment and upon payment by the Vendee of the amount required to be paid by it pursuant to the fourth paragraph of this Article 4 and subparagraph (a) of the fifth paragraph of this Article 4. The Vendor shall not be obligated to make any abovementioned payment at any time after the earlier of the dates specified in the third paragraph of Article 2 hereof. In the event that the Vendor shall not make any such payment, the Vendor shall release to the Builder and the Vendee, as their interests may appear, without recourse to the Vendor, all right, title and

interest of the Vendor, if any, in and to the Hulks or the Reconstruction with respect to which payment has not been made by the Vendor. Notwithstanding anything to the contrary herein expressed or implied, the parties hereto agree that the Vendor shall have no obligation with respect to the reconstruction of the Hulks or delivery of the Equipment.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 14 and 15 hereof), it is understood and agreed by the Vendor that the liability of the Vendee and the Beneficiary (for which the Vendee is acting as trustee) for all payments to be made by it under and pursuant to this Agreement, with the exceptions only of the payments to be made pursuant to Article 18 hereof and the fourth paragraph of this Article and subparagraph (a) of the fifth 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", and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee and the Beneficiary for which the Vendee is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Vendee or any assignee of the Vendee. In addition, the Vendor agrees that the Vendee and the Beneficiary (i) make no representation or warranty, and are not responsible for, the due execution, validity, sufficiency or enforceability of the Lease insofar as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendee's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 14 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 of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 6 hereof) paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (c) any and all other payments received by the Vendee or any assignee of the Vendee under Section 16 of the Lease and (ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a), (b) and (c) 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 due and payable on, or within six (6) days after, the date such amounts received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease 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), (b) and (c) which were 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 due and payable on, or within six (6) days after, the date on which interest is payable on the Conditional Sale Indebtedness corresponding to the date on which amounts with respect thereto received by the Vendee or any assignee of the Vendee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 15 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, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

**ARTICLE 5. 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 net 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 for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its interest therein and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the interest 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 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; provided, however, that the Vendee shall not be obligated to reimburse the Vendor for any impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 6. Maintenance: Casualty Occurrences.

The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be worn out beyond repair, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (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 informed in regard thereto. Provided the Lessee has not elected to provide a replacement unit in accordance with subparagraph (ii) of Section 11 of the Lease, on the next succeeding date for the payment of interest on the Conditional Sale Indebtedness (hereinafter called a Casualty Payment Date), the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. 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, calculated as provided in the fourth paragraph of Article 4 hereof.

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 property 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, 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 thereof remaining unpaid on the date as of which such Casualty Value shall be determined, plus nine percent (9%) interest per annum accrued thereon but unpaid to the date of payment. 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.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to the Vendor having received payment of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments 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 damage to such unit in respect of which such proceeds were paid has been fully repaired.

ARTICLE 7. Reports and Inspections. On or before August 31 in each year, commencing with the year 1976, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding June 30 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding year (or since the date of this Agreement in the case of the first such statement) 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 8 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and all records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 8. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A or 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" 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 markings shall have been made thereon and will replace or will cause to be replaced promptly any such 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 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 Lessee or its affiliates.

#### ARTICLE 9. Compliance with Laws and Rules.

During the term of this Agreement, the Vendee will comply, and will cause every lessee 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 lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, and Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require

any alteration, replacement or addition of 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 10. 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 Vendor 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 lease the Equipment to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; provided, however, that so long as the Lessee shall not be in default under the Lease or otherwise, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the Lease. 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 Lease and until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

The Vendee may also lease the Equipment to any other railroad company under conditions substantially similar to the conditions of the Lease with the prior written consent of the Vendor; provided, however, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to 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 (iii) a copy of such lease shall be furnished

to the Vendor. Disposal by the Lessee of any unit of Equipment pursuant to the Lease after a Casualty Occurrence shall not be deemed to be a breach of this Article 10.

ARTICLE 11. Prohibition Against Liens. The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its 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.

ARTICLE 12. 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 its 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 the Vendor retains an interest in the Equipment or the transfer of Vendor's interest in the Equipment by the Vendor pursuant

to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant made 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, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for the 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.

THE VENDOR MAKES NO WARRANTIES WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE EQUIPMENT HEREUNDER.

The Builder warrants that the work performed and material supplied by the Builder in performing any reconstruction work to the Hulks (except as to materials furnished, manufactured or supplied by Lessee or a party specified by Lessee other than Builder) will be free from defects in material and workmanship under normal use and service. The Builder's sole obligation under this warranty shall be limited to repairing or replacing any part or parts of such work or material which shall, within one year after the Builder shall have made delivery of such defective repairs or material, be returned to such place as the Builder shall designate with transportation charges prepaid and which the Builder's examination shall disclose to its reasonable satisfaction to have been defective in normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXTENDING BEYOND THE DESCRIPTION IN THE SPECIFICATIONS FOR SUCH RECONSTRUCTION OR MATERIALS AND SHALL BE IN LIEU OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF THE BUILDER; and the Builder shall not be liable to any party hereto for any indirect, special or consequential damages resulting from any defects in material or workmanship. The Builder agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action

hereinafter referred to, transfer, assign, set over and deliver to the Vendor and, subject to the rights of the Vendor under this Agreement, to the Vendee, every claim, right and cause of action which the Builder has or hereafter shall have against any party who shall perform any of the reconstruction of the Hulks and the Builder agrees to execute and deliver to the Vendor and the Vendee all and every such further assurance as may be reasonably requested more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

Except in cases of articles or materials specified by the Vendee or by the Lessee and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Vendee or by the Lessee and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Vendor and the Vendee from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor or the Vendee (i) because of the use by the Builder in or about or resulting from the reconstruction of the Hulks, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right or (ii) arising out of any accident or tort in connection with the reconstruction, operation, use, condition, possession or storage by the Builder of any of the Hulks or any unit of the Equipment resulting in damage to property or injury or death to any person. The Vendor or the Vendee will give notice to the Builder of any claim known to it from which liability may be charged against the Builder under this paragraph.

The warranties and indemnities contained or referred to in this Article 12 and in any other Articles hereof and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by, any lessor, lessee, assignee or transferee of this Agreement or of any Hulks reconstructed by the Builder hereunder.

**ARTICLE 13. Assignments.** The Vendee will not (a) except as provided in Article 10 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 the Lessee) 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 the 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 reconstruct and to deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 12 hereof, or relieve the Vendee of its respective obligations to the Vendor contained in Articles 2, 3, 4, 5, 6 and 12 hereof, Schedule A hereto and this Article 13, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee and the Lessee, 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 and the Lessee, respectively, of the notification of any such assignment, all payments thereafter to be made by the Vendee or the Lessee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

ARTICLE 14. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of any provision of this Agreement limiting the liability of the Vendee) and such default shall continue for fifteen (15) days; or

(b) The Vendee 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

(c) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition 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), all the obligations of the Lessee under the Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within thirty (30) days after such appointment, if any, or sixty (60) days after such petition shall have been filed, whichever shall be earlier; or

(d) Any other proceeding shall be commenced by or against the Lessee for any relief which includes, or might result in, any modification of the obligations of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Lessee under the Lease), 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), all the obligations of

the Lessee under the Lease shall not have been duly assumed in writing, pursuant to the court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such 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 thirty (30) days after such appointment, if any, or sixty (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; or

(f) An Event of Default shall occur under the Lease,

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee set forth in Article 10 hereof, cause the Lease immediately upon such notice to terminate and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of such 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 wherever situated. The Vendee 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.

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 Lease by notice to the Vendee and the Lessee 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 Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed 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 15. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 10 hereof, and in compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Vendee or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 15 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person and for such purpose may enter upon the premises of the Vendee or the Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee or the Lessee.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Lessee shall (subject to the rights of the Lessee set forth in Article 10 hereof), at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines and shall there deliver the Equipment or cause it to be delivered to the Vendor. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement

between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Vendee and/or the Lessee requiring specific performance hereof. The Vendee and the Lessee hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 15 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within thirty (30) days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee and the Lessee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of such 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; provided, further, that if the Vendee, the Lessee or any other person notified under the terms of this paragraph object in writing to the Vendor within thirty (30) days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other

manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 15.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 10 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness in respect of the Purchase Price of the Equipment, together with interest thereof accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Salt Lake City, Utah, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a

private sale, it shall be subject to the rights of the Vendee and the Lessee to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor, the Vendee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 15), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted 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.

If, after applying all sums of money realized by the Vendor after the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, and, if the Vendee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Vendee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee. 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 the last paragraph of Paragraph 4, which judgment so in excess shall only be obtained if necessary to establish the Vendor's rights against the Equipment, it will accordingly limit its execution of such judgment to amounts payable pursuant to the limitations set forth in the last paragraph of Paragraph 4.

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.

The foregoing provisions of this Article 15 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 16. 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, any conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee and the Lessee 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 to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, and 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 17. Recording. The Vendee will cause this Agreement, any assignments hereof and any amendments or

supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor, for the purpose of carrying out the intention of this Agreement; and the Vendee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 18. Payment of Expenses. The Vendee will pay all reasonable costs and expenses incident to this Agreement, and any instrument supplemental or related hereto.

ARTICLE 19. Article Headings: Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including any Schedule hereto, exclusively and completely states the rights of the Vendor, the Vendee and the Lessee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor, the Builder, and the Vendee.

ARTICLE 20. 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 or Vendor, at 79 South Main Street, Salt Lake City, Utah 84111, Attention: Trust Department, Corporate Division
- (b) To the Builder, at 2200 East Devon Avenue, Des Plaines, Illinois 60018;
- (c) To the Lessee, at 526 Mission Street, San Francisco, California 94105, Attention: Vice-President, Finance;

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

ARTICLE 21. Immunities: Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholders, director or officer, past, present or future, of the Vendor, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee to all persons including, but not limited to, the Vendor under the first paragraph of Article 6 and under Articles 5, 7, 8, 9, 11, 12 and 17 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 14 hereof. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Beneficiary or on account of any representation, undertaking or

agreement of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

ARTICLE 22. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of California; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated 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 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.

FIRST SECURITY BANK OF UTAH, N.A.,  
As Agent

[SEAL]

By \_\_\_\_\_  
Authorized Officer

Attest:

\_\_\_\_\_  
Title \_\_\_\_\_

U.S. RAILWAY MFG. CO.

[SEAL]

By \_\_\_\_\_

Attest:

\_\_\_\_\_

Title \_\_\_\_\_

FIRST SECURITY BANK OF UTAH, N.A.,  
Not in its individual capacity,  
but solely as Trustee

[SEAL]

By \_\_\_\_\_

Authorized Officer

Attest:

\_\_\_\_\_

Title \_\_\_\_\_

THE WESTERN PACIFIC RAILROAD COMPANY,  
Joining the Agreement for purposes of  
Articles 1, 4, 13 and 15

[SEAL]

By *W. H. Humber* \_\_\_\_\_

Vice President — Finance

Attest:

*A. D. Brew*  
\_\_\_\_\_

Title SECRETARY

Schedule A to Reconstruction and  
Conditional Sale Agreement

<u>Quantity</u>	<u>Designation</u>	<u>Railroad Road Numbers Prior to Reconstruction</u>	<u>Railroad Road Numbers Following Reconstruction (inclusive)</u>		
134	50' 6" 70 Ton Box Car	WP 56176-56325	WP 64801-64934		
Base Reconstruction Cost		Sum Payable to Lessee Under Hulk Purchase Agreement (Hulk Cost)			
<u>Per Unit</u>	<u>Total</u>	<u>Per Unit</u>	<u>Total</u>	<u>Base Price Per Unit</u>	<u>Maximum Purchase Price</u>
\$24,990.93	\$3,348,784.62	\$7,000	\$938,000	\$31,990.93	\$4,355,000

Specifications -- As set forth in Western Pacific Railroad Company Purchase Order Number 31313, referring to Builders Quotation of December 4, 1975, Estimate 600, Builders letter of January 5, 1976 and Western Pacific Specification C-2-1975.

Point of Delivery of Equipment to Vendee: FOT Builder's reconstruction facility at Washington, Indiana.

STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is an Authorized Officer of First Security Bank of Utah,  
N.A., that the seal affixed to the foregoing instrument is  
the corporate seal of said association and that said  
instrument was signed and sealed on behalf of said  
association by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was a free act and deed of said association.

-----  
Notary Public

[NOTARIAL SEAL]

My commission expires:

STATE OF UTAH, )  
 ) ss.:  
COUNTY OF SALT LAKE, )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1976,  
before me personally appeared \_\_\_\_\_, to me  
personally known, who, being by me duly sworn, says that he  
is an Authorized Officer of First Security Bank of Utah,  
N.A., that the seal affixed to the foregoing instrument is  
the corporate seal of said association and that said  
instrument was signed and sealed on behalf of said  
association by authority of its Board of Directors, and he  
acknowledged that the execution of the foregoing instrument  
was a free act and deed of said association.

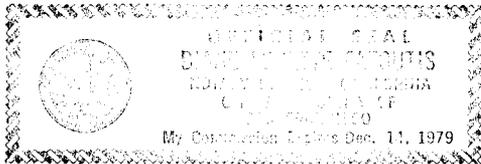
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Notary Public

[NOTARIAL SEAL]

My commission expires:

STATE OF CALIFORNIA )  
 ) ss.:  
CITY AND COUNTY OF SAN FRANCISCO )

On this 22nd day of April, 1976, before me personally appeared R. W. STUMBO, JR., to me personally known, who, being by me duly sworn, says that he is the VICE PRESIDENT - FINANCE of The Western Pacific Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was a free act and deed of said corporation.



Diane Lorette Lafontie  
Notary Public

(NOTARIAL SEAL)

My commission expires: 12/14/79