

CRAVATH, SWAINE & MOORE

ONE CHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

212 HANOVER 2-3000

INTERNATIONAL TELEX: 620976

TELETYPE: 710-581-0338

TELEX: 125547

MAURICE T. MOORE  
BRUCE BROMLEY  
ROSWELL L. GILPATRICK  
ALBERT R. CONNELLY  
FRANK H. DETWEILER  
GEORGE G. TYLER  
JOHN H. MORSE  
CHARLES R. LINTON  
WILLIAM B. MARSHALL  
RALPH L. McAFEE  
ROYALL VICTOR  
ALLEN H. MERRILL  
HENRY W. DEKOSMIAN  
ALLEN F. MAULSBY  
STEWARD R. BROSS, JR.  
HENRY P. RIORDAN  
JOHN R. HUPPER  
SAMUEL C. BUTLER  
WILLIAM J. SCHRENK, JR.  
BENJAMIN F. CRANE  
FRANCIS F. RANDOLPH, JR.  
JOHN F. HUNT, JR.  
GEORGE J. GILLESPIE, III

RICHARD S. SIMMONS  
WAYNE E. CHAPMAN  
THOMAS D. BARR  
MELVIN L. BEDRICK  
GEORGE T. LOWY  
ROBERT ROSENMAN  
JAMES H. DUFFY  
ALAN J. HRUSKA  
JOHN E. YOUNG  
JAMES M. EDWARDS  
DAVID G. ORMSBY  
DAVID L. SCHWARTZ  
RICHARD J. HIEGEL  
FREDERICK A. O. SCHWARZ, JR.  
CHRISTINE BESHAR  
ROBERT S. RIFKIND  
DAVID BOIES  
DAVID O. BROWN  
PAUL M. DODYK  
RICHARD M. ALLEN  
THOMAS R. BROME  
ROBERT D. JOFFE  
ROBERT F. MULLEN

CARLYLE E. MAW  
L. R. BRESLIN, JR.  
HAROLD R. MEDINA, JR.  
COUNSEL  
4, PLACE DE LA CONCORDE  
75008 PARIS, FRANCE  
TELEPHONE: 265-81-54  
TELEX: 290530  
TERMINAL HOUSE  
52, GROSVENOR GARDENS  
LONDON, SW1W 0AU, ENGLAND  
TELEPHONE: 01-730-5203  
TELEX: 917840  
CABLE ADDRESSES  
CRAVATH, N.Y.  
CRAVATH, PARIS  
CRAVATH, LONDON S.W.1

8618

RECORDATION NO. .... Filed & Recorded

8618-A

RECORDATION NO. ....

Filed & Recorded

DEC 20 1976 9 35 AM

DEC 20 1976 9 35 AM INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION

December 17, 1976

Canadian National Railway Company

Dear Sirs:

Pursuant to Section 20c of the Interstate Commerce Act, I enclose herewith on behalf of Canadian National Railway Company for filing and recordation counterparts of each of the following documents:

Conditional Sale Agreement dated as of December 1, 1976, between each of General Motors of Canada Limited (Diesel Division) (hereinafter called "General Motors"), MLW Industries (Division of MLW Worthington Limited) (hereinafter called "MLW Industries") and Canadian National Railway Company.

The names and addresses of the parties to the Conditional Sale Agreement are as follows:

1. Canadian National Railway Company,  
P.O. Box 8108,  
Montreal, Quebec H3C 3N3, Canada
2. General Motors of Canada Limited  
(Diesel Division),  
2021 Oxford Street,  
P.O. Box 5160,  
London, Ontario,  
Canada.
3. MLW Industries (Division of MLW  
Worthington Limited),  
P.O. Box 1000,  
Place d'Arnes,  
Montreal, Quebec H2Y 3J7,  
Canada.

*M. C. C. C.*  
*C. C. C. C.*

RECEIVED  
DEC 20 9 32 AM '76  
I.C.C. OPERATION BR.  
FEE OPERATION BR.

6-355 P/10

Date 12-20-76  
Fee \$ 50-

ICC Washington, D.C.

Also enclosed for filing and recordation are counterparts of the Agreement and Assignment dated as of December 1, 1976, between each of General Motors, MLW Industries and Mercantile-Safe Deposit and Trust Company, as Trustee. Said Agreement and Assignment is an assignment of the aforementioned Conditional Sale Agreement.

The equipment covered by the aforementioned documents consist of:

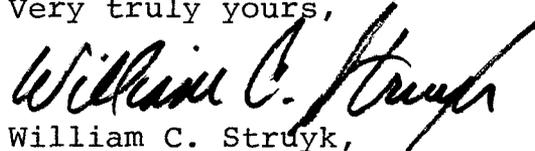
20 MLW 2000 h.p. Diesel Locomotives  
20 GP-40 3000 h.p. Diesel Locomotives  
15 GP-40 3000 h.p. Diesel Locomotives  
15 SD-40 3000 h.p. Diesel Locomotives

Please cross-index each of the Conditional Sale Agreement and Assignment under the names of Canadian National Railway Company, Mercantile-Safe Deposit Company, General Motors and MLW Industries.

There is also enclosed a check payable to the Interstate Commerce Commission representing the fee for recording the Conditional Sale Agreement and Assignment.

Please stamp each counterpart of the enclosed documents and the three attached copies of this transmittal letter with your official recording stamp. You will retain two copies of each document and the original of this transmittal letter for your files. The remaining counterparts of each document and the three copies of this transmittal letter should be returned to the bearer of this letter.

Very truly yours,



William C. Struyk,  
on behalf of  
Canadian National Railway Company

Robert L. Oswald, Esq.,  
Secretary,  
Interstate Commerce Commission,  
Washington, D.C. 20423

Encls.

D

BY HAND

**Interstate Commerce Commission**  
Washington, D.C. 20423

12/20/76

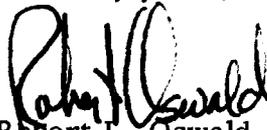
OFFICE OF THE SECRETARY

William C. Struyk  
Cravath, Swaine & Moore  
One Chase Manhattan Plaza  
New York, N.Y. 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 12/20/76 at 9:35am , and assigned recordation number(s) 8618 & 8618-A

Sincerely yours,

  
Robert L. Oswald  
Secretary

Enclosure(s)

SE-30  
(5/76)

RECORDATION NO. 8618 Filed & Recorded

DEC 20 1976 -9 35 AM

INTERSTATE COMMERCE COMMISSION

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**CONDITIONAL SALE AGREEMENT**

*Dated as of December 1, 1976*

between each of

**GENERAL MOTORS of CANADA LIMITED**

(Diesel Division),

**MLW INDUSTRIES**

*SPAMBAUER*  
(Division of ~~MLW Worthington~~ Limited)

and

**CANADIAN NATIONAL RAILWAY COMPANY**

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# CONDITIONAL SALE AGREEMENT

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**CONDITIONAL SALE AGREEMENT** dated as of December 1, 1976, between each of GENERAL MOTORS OF CANADA LIMITED (Diesel Division), MLW INDUSTRIES (Division of ~~MLW WORTHINGTON~~ LIMITED) (hereinafter called collectively the Builders or individually the Builder, or collectively or individually the Vendor as the context may require, all as more particularly set forth in Article 1 hereof), and CANADIAN NATIONAL RAILWAY COMPANY, a corporation duly incorporated under the laws of Canada (hereinafter called the Railroad).

BONDARDIER  
JMB  
[Signature]

WHEREAS, the Builders severally have agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the Equipment) ;

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

ARTICLE 1. *Certain Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the respective corporations named in Item I of Schedule B hereto and any successor or successors for the time being to their manufacturing properties and businesses, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Whenever the term "Vendor" refers to a corporation named in Item 1 of Schedule B hereto, such term shall mean any or all such corporations, as the context may require. The parties hereto contemplate that this Agreement shall be assigned to Mercantile-Safe Deposit and Trust Company, acting as Trustee under a Finance Agreement dated as of the date hereof. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the respective corporations (as to the units of Equipment to be constructed by such corporations and sold hereunder) named in Item 1 of Schedule B hereto and any successor or successors for the time being to their respective manufacturing properties and businesses.

The rights and obligations of the Builders under this Agreement are several in accordance with their interests and not joint. Accordingly, whenever this Agreement, by the use of such designation as "the Vendor", "such Builder" or other similar term, confers a right or imposes an obligation upon any corporation named in Item 1 of Schedule B hereto or its successor, such right or obligation shall be construed to accrue to or to be enforceable against only the specific corporation furnishing the units of Equipment giving rise to such right or obligation and its successors as herein provided.

**ARTICLE 2. *Construction and Sale.*** Pursuant to this Agreement, each Builder shall construct the units of the Equipment to be constructed by it as described in Schedule A hereto (such units of Equipment with respect to such Builder being hereinafter called its Equipment) at its plant set forth in said Schedule A and will sell and deliver to the Railroad, and the Railroad, will purchase from such Builder and accept delivery of and pay for (as hereinafter provided), such Equipment, each unit of which shall be constructed in accordance with the specifications set forth therefor in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builders and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The Railroad and each Builder of its Equipment severally represent that the design, quality and component parts of each unit of the Equipment supplied by the Builders and the construction thereof shall conform, on the date of completion of manufacture of each thereof, to all Canadian Transport Commission requirements and specifications and other regulatory requirements reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Article 8 hereof) will be new railroad equipment first put into service no earlier than December 1, 1976, and will be non-special purpose equipment capable of being employed in the normal course of operations by railroads in general.

**ARTICLE 3. *Inspection and Delivery.*** Each Builder will deliver the units of its Equipment to the Railroad at the place or places specified in Schedule A hereto (or if Schedule A does not specify a place or places, at the place or places designated from time to time by the Railroad),

freight charges, if any, prepaid; *provided, however*, that no Builder shall have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or event which with the lapse of time and/or demand or failure to take action provided for herein could constitute such an event of default, shall have occurred and be continuing.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Repayment Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder or Builders of such unit or units and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If a Builder's failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph or the first paragraph of this Article 3 the Railroad shall nevertheless be obligated to accept such Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by such Builder, such payment to be in cash on the delivery of such Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to such Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and each Builder shall grant to such authorized inspectors reasonable access to its plant.

Each Builder agrees to inspect all materials used in the construction of its Equipment in accordance with the standard quality control practices of such 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 Railroad 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 Railroad shall execute and deliver to such Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 7 hereof; *provided, however*, that such Builder shall not thereby be relieved of its warranty referred to in Article 14 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

ARTICLE 4. *Purchase Price and Payment; Interest; Closing Dates.* The base price per unit of the Equipment is set forth in Schedule A hereto. The base price is subject to such increase or decrease as may be agreed to by the Builder thereof and the Railroad, including any increase or decrease due to a change in the actual rate of conversion on any Closing Date (as hereinafter defined) of Canadian Dollars into U. S. Dollars from the rate stated in Schedule A. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, plus off-line freight charges, if any.

For the purpose of making settlement hereunder, the Equipment of each Builder shall be divided into such number of groups (not exceeding four) of units of the Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a Group), as the Builder thereof and the Railroad may agree to.

The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash in immediately available United States funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

- (a) on each Closing Date (as hereinafter defined) with respect to each Group the amount, if any, by which (x) the Purchase Price of all units of the Equipment covered by this Agreement for which

settlement has theretofore or is then being made, as stated in the invoice or invoices therefor (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of \$37,000,000 (U. S.) and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a);

(b) in 12 consecutive semiannual instalments, as hereinafter provided, an amount equal to 28% of the balance of the Purchase Prices for all the Equipment not paid or payable pursuant to subparagraph (a), the first 10 instalments of which shall each be in an amount equal to 1/14th of the total amount payable under this subparagraph and the final two instalments of which shall each be in an amount equal to 1/7th of such total amount; and thereafter

(c) in 18 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 18, result in an amount ending in an integral cent) semiannual instalments, as hereinafter provided, an amount equal to the aggregate of the Purchase Prices for all the Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraphs (a) and (b) of this paragraph (the aggregate of all said instalments provided for in subparagraphs (b) and (c) of this paragraph being hereinafter called the Conditional Sale Indebtedness).

The instalments of the Conditional Sale Indebtedness payable pursuant to the third paragraph of this Article 4 shall be payable semiannually on June 1 and December 1 in each year commencing on June 1, 1977, to and including December 1, 1991; *provided, however*, that the instalments payable pursuant to subparagraph (b) of the third paragraph of this Article 4 shall be payable commencing on June 1, 1977, to and including December 1, 1982, and the instalments payable pursuant to subparagraph (c) of said third paragraph shall be payable commencing on June 1, 1983, to and including December 1, 1991. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on or prior to December 1, 1982, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 8% per annum. The unpaid portion of the Conditional Sale Indebtedness payable in instalments on or after June 1, 1983, shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 8½% per annum. All such interest shall be payable by the Railroad to the Vendor to the extent

accrued, on June 1 and December 1 in each year, commencing June 1, 1977.

The Railroad will pay to the Vendor in immediately available United States funds (a) on the Repayment Date (as hereinafter defined) an amount equal to interest from December 29, 1976 or January 18, 1977, as the case may be, (hereinafter called the Dates of Deposit) to the Repayment Date on an amount equal to the Surplus (as hereinafter defined) attributable to the moneys deposited with the Vendor on the respective Dates of Deposit (less an amount equal to any interest thereon theretofore paid pursuant to clause (b) hereof), such interest calculation to be at the rates set forth above for the Conditional Sale Indebtedness on the same basis as if the Surplus constituted Conditional Sale Indebtedness incurred on the appropriate Date of Deposit and (b) (i) on June 1, 1977, such amount, if any, as will equal interest from the respective Dates of Deposit to the respective Closing Dates on the Conditional Sale Indebtedness incurred on each Closing Date on or prior to June 1, 1977 plus such amount, if any, as will equal interest from the respective Dates of Deposit to June 1, 1977, on any Surplus remaining on June 1, 1977, and (ii) on December 1, 1977, such amount, if any, as will equal interest from June 1, 1977 to the respective Closing Dates on the Conditional Sale Indebtedness incurred on each Closing Date on or subsequent to June 1, 1977, such interest calculation to be at the rates set forth above for the Conditional Sale Indebtedness on the same basis as if the Conditional Sale Indebtedness was incurred on the appropriate Date of Deposit. The term "Surplus" as used herein shall mean the difference, at the time Surplus is to be determined, between the actual Conditional Sale Indebtedness incurred and \$37,000,000 (U.S.); and the term Repayment Date as used herein shall mean the earliest of (1) the Closing Date which shall be specified in a written notice given to the Vendor by the Railroad to be the last Closing Date hereunder, (2) November 30, 1977, or (3) the date of any Default (as defined in Article 8 hereof) as to which the Vendor has actual knowledge.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 9½% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts and shall be made in immediately available United States funds. Except as provided in Article 8 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 15 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date, on or after a Date of Deposit, and prior to the Repayment Date, as shall be fixed by the Railroad by written notice delivered to the Vendor at least five business days prior to the Closing Date designated therein; *provided, however*, that the aggregate Purchase Price of all units of Equipment for which settlement may be made prior to January 18, 1977 shall not exceed \$35,214,286. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Baltimore, Maryland, or New York, New York, are authorized or obligated to remain closed.

ARTICLE 5. *Taxes.* All payments to be made by the Railroad 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, provincial, federal or foreign taxes (excepting net income, gross receipts [other than Canadian withholding taxes and/or gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits 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, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessment, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of 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 title of the Vendor to the Equipment or result in a lien upon any part of the Equipment; *provided, however*, that the Railroad 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 interest or rights of the Vendor in or its title to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad 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 and shall be deemed to be payable by the Railroad as part of the purchase price of the Equipment; *provided, however*, that the Railroad 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 Railroad shall have approved the payment thereof.

ARTICLE 6. *Title to the Equipment.* The Vendor shall and hereby does retain full title to the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment 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 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by

the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring and releasing its interest therein and title thereto to the Railroad, or upon its order, free of all liens, claims, interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the right, interest, property and title of the Vendor in and to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. *Marking of the Equipment.* The Railroad hereby agrees that it will cause each unit of the Equipment to be kept numbered with its identifying road number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and that it will, as promptly as possible and in any event on or before December 31, 1978, cause each unit of Equipment to be marked, and thereupon 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 "Owned by" followed by the name and address of the Vendor followed by the words "as Trustee", or other appropriate ownership markings approved by the Vendor. The Railroad hereby agrees that it will, on or prior to March 31, 1979, certify to the Vendor that the Railroad has marked each unit with ownership markings as hereinabove provided. The Railroad agrees that it will replace promptly any such ownership markings and identifying road numbers which may

be removed, defaced or destroyed. The Railroad will not change the identifying road number of any unit of the Equipment 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 by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad 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 Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

**ARTICLE 8. *Casualty Occurrences; Replacement of Equipment and/or Prepayment; Investments; Insurance.*** In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by a governmental entity, other than a requisition for use by the Canadian or United States Government, and the loss of possession exceeds a period of 90 consecutive days (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Vendor in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which, pursuant to this Article 8, a payment shall have been made to the Vendor and/or replacement equipment shall have come under and be made subject to this Agreement) hereunder shall exceed \$100,000, the Railroad shall, on the next date for the payment of principal or interest hereunder occurring 30 days after the Railroad has knowledge of such Casualty Occurrence, file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence and either (i) pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such certificate or (ii) cause replacement equipment, having a value at least equal to such aggregate Casualty Value, to come under and be subject to this Agreement, in substitution for the

units of Equipment having suffered a Casualty Occurrence, all as hereinafter provided; *provided, however*, that on or prior to the date five years after the last Closing Date under Article 4 hereof (such period being referred to as the Restricted Period), no such payment may be made to the Vendor if the aggregate of the sum of such payments, all principal payments made or required to be made during the Restricted Period pursuant to Article 4 hereof and all other payments made to the Vendor pursuant to this Article 8 would exceed 25% of the original aggregate principal amount of the Conditional Sale Indebtedness, in which case the Railroad must cause replacement equipment to come under and be subject to this Agreement as provided in this Article 8.

So long as no event of default or event which with the lapse of time and/or demand or failure to take action provided in Article 16 hereof could constitute an event of default (any such event of default or event being hereinafter called a Default) shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied, on or before the next instalment date for the payment of Conditional Sale Indebtedness occurring more than 180 days following the date of such payment to the Vendor, to prepay instalments of Conditional Sale Indebtedness or toward the cost of replacement equipment to be purchased from the Railroad or both, and in the event that no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of the Conditional Sale Indebtedness as aforesaid. In case any money is applied pursuant to this Article 8 to prepay Conditional Sale Indebtedness, it shall be so applied without premium to reduce the instalments of Conditional Sale Indebtedness thereafter falling due *pro rata* in proportion to the principal amount of each such instalment remaining unpaid.

Any unit of replacement equipment shall consist of a unit of standard gauge railroad equipment (other than passenger or work equipment of types other than locomotives) first put into service no earlier than December 1, 1976, and having a remaining useful life (as evidenced by a certificate of an officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the cost thereof paid by the Vendor (or, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be numbered and marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment, shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. The Railroad warrants that title to all such replacement units shall be free and clear of all claims, liens, security interests and encumbrances except the liens permitted by the second paragraph of Article 12 hereof and shall be taken initially and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record and/or deposit all such documents and do any and all such acts as may be necessary to cause title to such replacement units to vest in the Vendor and to come under and be subject to this Agreement.

Whenever the Railroad shall cause replacement equipment to come under and be subject to this Agreement or shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file with the Vendor:

- (1) a confirmation of transfer of all right, title and interest therein to the Vendor;

(2) a certificate of a Vice President, Secretary, Deputy Secretary, Treasurer or the Chief Accounting Officer of the Railroad certifying (a) that such replacement unit is standard gauge railroad equipment (other than work or passenger equipment of types other than locomotives) first put into service no earlier than December 1, 1976, and has been numbered and marked as required by the provisions of this Article 8, (b) as to the cost of such replacement unit (and, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof), (c) that the cost thereof to the Vendor (or, in the case of a direct replacement pursuant to clause (ii) of the second sentence of the first paragraph of this Article 8, the value thereof) does not exceed the lesser of the fair market value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, and (d) that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(3) an opinion of counsel for the Railroad that the Vendor has good and lawful title to such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement.

So long as no Default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal, premium and interest or (ii) certificates of deposit of, or bankers' acceptances, accepted by, domestic commercial banks in the United States of America having total assets in excess of \$1,000,000,000 and capital and surplus aggregating at least \$100,000,000, in each case maturing in not more than 90 days from the date of such investment (such investments being hereinafter called Investments). Any such obligations shall from time to time be sold and/or redeemed and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity

of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 8, and any excess shall be paid to the Railroad.

In the event the Builders, pursuant to Article 15 hereof, assign their rights, hereunder, the assignee will have available on the last of the two Dates of Deposit, a sum equal to \$37,000,000 (U.S.) for the purchase of the Equipment from the Builders pursuant to such assignment. If all of the Equipment is not so purchased on any of the Dates of Deposit, the Railroad may request the assignee to invest such funds in Investments. If the proceeds (including accrued interest received) on the sale or maturity of any Investments made by the assignee at the request of the Railroad pursuant to the preceding paragraph of this Article 8 or the second sentence of this paragraph shall be less than the cost thereof (including accrued interest paid), the Railroad will promptly pay to the assignee an amount equal to such deficiency. The Railroad will pay all expenses incurred by the assignee in connection with the purchase and sale of such Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 17 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, maintain an appropriate insurance fund in respect of self-insur-

ance of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 9. *Maintenance; Compliance with Laws and Rules.* The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense, normal wear and tear excepted.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, and with all lawful rules of the Canadian Transport 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 any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; *provided, however,* that the Railroad 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. *Reports, Inspections and Financial Statements.* On or before March 31 in each year, commencing with the calendar year 1978, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar years (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) 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 7 hereof have been preserved or replaced. On or before March 31, 1979, the Railroad shall furnish to the Vendor a certified report or reports, as provided in Article 7 of this Agreement, with respect to the Railroad having marked each unit of the Equipment with the ownership markings as provided in said Article 7. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

So long as any Conditional Sale Indebtedness shall be unpaid, the Railroad will deliver to the Vendor (i) as soon as available, and in any event within 30 days of its presentation to the Parliament of Canada, copies of the Annual Report of the Railroad, containing the balance sheet of the Railroad as of the end of such year and the statements of income and retained earnings of the Railroad for such fiscal year, all in reasonable detail and certified by the chartered accountants or government auditors appointed therefor by the Parliament of Canada; (ii) promptly upon its release to the public, copies of each other report submitted to the Parliament of Canada by government auditors or by the government-appointed chartered accountants in connection with any annual, quarterly, interim or special audit made by them of the books of the Railroad; (iii) immediately upon becoming aware of the existence of a Default (as defined in Article 8 hereof), a written notice which specifies the nature of the claimed Default and what action the Railroad is taking or proposes to take with respect thereto; (iv) immediately upon becoming aware that notice has been given or any action taken with respect to a claimed Default, a written notice specifying the notice given or action taken and the nature of the claimed Default and what action the Railroad is taking or proposes to take with respect thereto; and (v) with reasonable promptness, such other data as from time to time reasonably may be requested by the Vendor.

If while any of the Conditional Sale Indebtedness shall be unpaid, the Railroad shall not be required to make an annual report to the Parliament of Canada, or such annual report shall not be certified by government auditors or chartered accountants appointed by the Parliament therefor, the Railroad will cause to be prepared and will deliver to the

Vendor (i) as soon as practicable after the end of each quarterly fiscal period in each fiscal year of the Railroad and in any event within 45 days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries as of the end of each such quarter and consolidated statements of income and of surplus of the Railroad and its consolidated subsidiaries for each such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter, setting forth in each case in comparative form, the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct, subject to changes resulting from year-end adjustments, by a principal financial officer of the Railroad; (ii) as soon as practicable after the end of each fiscal year of the Railroad, and in any event within 120 days thereafter, copies of the consolidated balance sheet of the Railroad and its consolidated subsidiaries at the end of such year, and consolidated statements of income and of surplus of the Railroad and its consolidated subsidiaries for such year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by a favorable opinion thereon of independent certified public accountants of the United States, or chartered accountants of Canada, of recognized national standing selected by the Railroad, which opinion shall state that such financial statements have been prepared in accordance with generally accepted accounting principles consistently applied (except for changes in application in which such accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances; (iii) as soon as available, copies of each financial statement or financial report required to be submitted by the Railroad to its shareholders; and (iv) with reasonable promptness, such other data as from time to time reasonably may be requested by the Vendor.

Each set of annual financial statements delivered pursuant to this Article 10 shall be accompanied by a certificate of the President, a Vice President, the Treasurer or an Assistant Treasurer of the Railroad stating that he has reviewed the relevant terms of this Agreement and he made, or caused to be made under his supervision, a re-

view of the transactions or conditions of the Railroad from the beginning of the accounting period covered by the income statements being delivered therewith to the date of the certificate and that such review has not disclosed the existence during such period of any Default or if any such Default existed or exists, specifying the nature and period of existence thereof and what action the Railroad has taken or proposes to take with respect thereto.

All reports, statements and certificates delivered pursuant to this Article 10 shall be furnished in such number of copies as reasonably may be requested by the Vendor.

The Railroad will permit the Vendor, its agents and representatives and any representative of its principals and beneficiaries to examine all books and accounts, records and reports and other papers of the Railroad or any subsidiary, to make copies and extracts therefrom and to discuss its affairs, finances and accounts with its officers, employees and the aforesaid accountants or auditors (and the Railroad hereby authorizes such accountants and auditors to so discuss its affairs) all at such reasonable times and as often as may be reasonably requested, to the full extent permitted by law.

The financial statements of the Railroad heretofore delivered to the Vendor do not, nor does this Agreement or any written statement furnished by the Railroad to the Vendor in connection with the negotiation of the sale of the Conditional Sale Indebtedness, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which the Railroad has not disclosed to the Vendor in writing which materially affects adversely nor, so far as the Railroad can now foresee, will materially affect adversely the properties, business, prospects, profits or condition (financial or otherwise) of the Railroad and its subsidiaries or the ability of the Railroad to perform this Agreement.

ARTICLE 11. *Possession and Use.* So long as an event of default shall not have occurred under this Agreement and be continuing, the Railroad shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or

upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the units of Equipment by the Builder of such units to the Railroad, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that such use of the Equipment by the Railroad shall be restricted to the United States and Canada.

So long as no Default shall have occurred and be continuing, the Railroad shall be entitled to sublease any or all of the units of Equipment for a period not in excess of 90 days to railroad companies incorporated in the United States of America (or any State thereof or the District of Columbia) or under the laws of Canada (or any Province thereof), and to permit their use upon the lines of railroads owned or operated by such railroad companies or over which such railroad companies have trackage rights or rights for operation of their trains, and upon connecting and other carriers, in the usual interchange of traffic; *provided, however*, that if the Railroad so subleases or permits the use of any units of Equipment, it shall first have taken all necessary action to protect the rights, title and interest of the Vendor in the units or Equipment so to be subleased or used.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession and use of the units of Equipment included in such sublease and the use thereof; *provided, however*, that every such sublease shall provide that the units of Equipment under such sublease are subject to the rights of the Vendor under this Agreement.

**ARTICLE 12. *Prohibition Against Liens.*** The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad, or its successors or assigns which, if unpaid, might become a claim, lien, charge, encumbrance or security interest on or in the Equipment, or any unit thereof, equal or superior or adverse to the Vendor's title therein; *provided, however*, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the

Vendor, adversely affect the property, title or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such claims, liens, charges, encumbrances or security interests upon the Equipment shall be secured by and under this Agreement and shall be deemed to be payable by the Railroad as part of the Purchase Price of the Equipment.

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 13. *Railroad's Indemnities.* The Railroad 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 counsel fees arising out of ownership by the Vendor of the Equipment, the use and operation thereof by the Railroad during the period when said title remains in the Vendor or the transfer of said title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 14. *Patent Indemnities; Builders' Warranty of Material and Workmanship.* Except in cases of articles or materials specified by the Railroad and not manufactured by such Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by such Builder, each Builder agrees to indemnify, protect and hold harmless the Railroad from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Railroad, its assigns or the users of its respective Equipment because of the use in or about the construction or operation of any of such Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The

Railroad likewise will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder of such Equipment or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by such Builder which infringes or is claimed to infringe on any patent or other right. Each Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which such Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by such Builder for use in or about the construction or operation of any of the Equipment of such Builder on the ground that any such design, system, process, formula, combination, article or material or operation thereof infringes or is claimed to infringe on any patent or other right. Each Builder further agrees to execute and deliver to the Railroad or the users of the Equipment of such Builder all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. Each Builder will give notice to the Railroad of any claim known to such Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to such Builder of any claim known to the Railroad from which liability may be charged against such Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

Each Builder's warranty of material and workmanship is set forth in Schedule B hereto and is fully incorporated herein as if a part hereof.

ARTICLE 15. *Assignments; Stock Ownership.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this

Agreement or, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor.

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 Railroad, 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 any Builder from, any of the obligations of such Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or referred to in Article 14 hereof, or relieve the Railroad of any of its obligations to such Builder under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule B hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

In the event of any such transfer or assignment, or successive transfers or assignments by the Vendor, of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such transferee or assignee, change the markings to be placed on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such markings to be such as shall be specified by such transferee or assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale agreements and understands

that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of a Builder with respect to the Equipment of such Builder or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by a Builder. Any and all obligations of the Builders hereunder, howsoever arising, shall be and remain enforceable by the Railroad against and only against the respective Builders and not against any assignee of this Agreement.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builders and the assignee shall not make payment to a Builder with respect to units of Equipment of such Builder as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to such Builder the aggregate unpaid Purchase Price of such units of its Equipment, together with

interest from the day such payment was due to the date of payment by the Railroad at the prime rate of interest charged by the Canadian Imperial Bank of Commerce in effect during the period such payment was due.

If at any time during the term of this Agreement Her Majesty the Queen in right of Canada shall cease to own at least 50.1% of the issued and outstanding shares of each class of the common stock of the Railroad and each class of any other capital stock of the Railroad having ordinary voting power for the election of directors at the time outstanding, the Railroad agrees, upon written demand from the Vendor to the Railroad, to pay to the Vendor on the next succeeding payment date for interest on the Conditional Sale Indebtedness which is more than 15 days after such demand is made by the Vendor an amount equal to the aggregate of the unpaid Conditional Sale Indebtedness plus all accrued interest thereon.

ARTICLE 16. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

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

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any 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 or performed or to make provision satisfactory to the Vendor for such compliance; or

(c) any proceedings shall be commenced by or against the Railroad for any relief under the Railway Act of Canada, the Bankruptcy Act of Canada or the Winding-up Act of Canada, as now constituted or as said Acts may be hereafter amended, or under any law relating to the relief of debtors, readjustments of indebtedness, reorganizations, receiverships, arrangements, compositions, extensions, moratoriums, insolvency, bankruptcy, liquidation or winding-up (other than a law which does not permit any readjustment of the indebtedness payable hereunder), 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 Railroad un-

der this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad 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 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) the Railroad 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;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a Declaration of Default) the entire 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. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any available property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which 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 by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the es-

sence 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 17. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to 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 Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises 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 Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage (for a period not exceeding 270 days after all of the units of Equipment have been assembled on such lines or premises), the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at

the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and/or users; *provided, however*, that the Railroad shall not be liable, except in the case of negligence of the Railroad or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Vendor or any prospective purchaser, lessee, and/or user, the rights of inspection granted under this sentence. 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 Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire 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 Railroad by telegram or registered mail, addressed as provided in Article 21 hereof, and to any other persons to whom the law may require notice, within 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 Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, 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 the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment 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 Railroad; *provided, further*, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 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 17.

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 Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad, 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 Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement 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 Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling 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 such place or places and at such time or times 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. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 hereof and shall be entitled to bid thereon. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad 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 to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad'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 Railroad'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 under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable.

If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. 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 Railroad.

The Railroad will pay all reasonable expenses, including attorneys' and barristers' and solicitors' 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 attorneys' and barristers' and solicitors' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. *Applicable State and Provincial Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable law of Canada or the United States of America) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad 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 Railroad, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be deposited with the Registrar General of Canada in accordance with Section 86 of the Railway Act of Canada and notice of such deposit to be duly published in The Canada Gazette as provided in said Section 86 and to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act; and the Railroad 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 proper protection, to the satisfaction of the special counsels for the Vendor, of the title of the Vendor to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 20. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses of the Vendor incident to this Agreement (including the fees and expenses of the Vendor, except the counsel fees of the Builders), and any instrument supplemental or related hereto or thereto, including all fees and expenses of the special United States and special Canadian counsels for the Vendor and for any party acquiring interests in the Conditional Sale Indebtedness and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in the Conditional Sale Indebtedness.

ARTICLE 21. *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 Railroad, at P. O. Box 8108, Montreal, Quebec H3C 3N3, Canada, Attention of Treasurer (or, during a postal strike, embargo or other interruption affecting mail delivery to the Railroad, at 935 Lagachetiere Street West, Montreal, Quebec, Canada, Attention of Treasurer);

(b) to a Builder, at its address specified in Item 1 of Schedule B hereto; and

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,  
or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 22. *Article Headings; Effect and Modification of Agreement.* The Table of Contents hereto and all article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

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 officers of the Vendor and the Railroad.

ARTICLE 23. *Law Governing.* The Railroad warrants that its chief place of business and its chief executive offices are located in the Province specified in clause (a) of Article 21 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Province of Ontario; *provided, however,* that the parties shall be entitled to all rights conferred by Section 86 of the Railway Act of Canada and 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 24. *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. It shall not be necessary that any counterpart be signed by all the parties so long as any counterpart be signed by the Railroad and one or more Builders. Each Builder shall be bound hereunder, notwithstanding the failure of any other Builder to execute and deliver this Agreement, or perform its obligations hereunder, and this Agreement shall be deemed to be a separate Agreement between the Railroad and each of the respective Builders. Although this Agreement is dated, for convenience, as of the date first set forth above, 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, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.



CANADIAN NATIONAL RAILWAY COMPANY,

By [Signature]  
Vice President

and

[CORPORATE SEAL]

By [Signature]  
Deputy Secretary

GENERAL MOTORS OF CANADA LIMITED (DIESEL DIVISION)

By [Signature]  
Vice President  
GENERAL SALES MANAGER

[CORPORATE SEAL]

By [Signature]  
Assistant Secretary

MLW INDUSTRIES (DIVISION OF BOMBARDIER  
MLW ~~W~~ LIMITED)

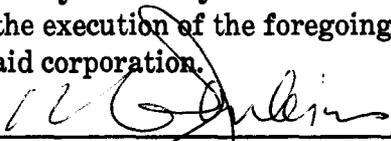
By [Signature]  
President

[CORPORATE SEAL]

By [Signature]  
~~Assistant Secretary~~  
VICE PRESIDENT

PROVINCE OF QUEBEC, }  
CITY OF MONTREAL, } SS.:

On this 17 day of December, 1976, before me personally appeared  
J. H. SPICER and L. A. FULLER, to me personally  
known, who, being by me duly sworn, says that they are Vice President  
and Deputy Secretary, respectively, of CANADIAN NATIONAL RAILWAY  
COMPANY, that one of the seals affixed to the foregoing instrument is  
the corporate seal of said corporation, that said instrument was signed  
and sealed on behalf of said corporation by authority of its Board of  
Directors and they acknowledged that the execution of the foregoing in-  
strument was the free act and deed of said corporation.

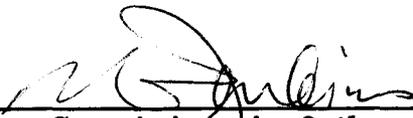
  
\_\_\_\_\_  
Commissioner for Oaths  
District—Montreal  
Commissaire A L'Assermentation

R. G. Jenkins,  
Commissioner for Oaths  
Commissaire à l'Assermentation  
District - Montreal  
Expires June 11/77

My Commission expires

QUEBEC  
PROVINCE OF ONTARIO }  
COUNTY OF MIDDLESEX } SS.:  
HOCHELAGA

On this 17 day of December, 1976, before me personally appeared  
P. G. BREWER and L. E. DICKINSON, to me personally  
known, who, being by me duly sworn, say that they are a ~~Vice~~<sup>General</sup>  
~~President~~ and ~~Deputy Secretary~~, respectively of GENERAL MOTORS  
OF CANADA LIMITED (DIESEL DIVISION), that one of the seals affixed  
to the foregoing instrument is the corporate seal of said corporation,  
that said instrument was signed and sealed on behalf of said corpora-  
tion by authority of its Board of Directors and he acknowledged that  
the execution of the foregoing instrument was the free act and deed  
of said corporation.

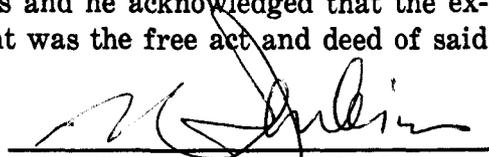
  
\_\_\_\_\_  
Commissioner for Oaths  
District—

R. G. Jenkins,  
Commissioner for Oaths  
Commissaire à l'Assermentation  
District - Montreal  
Expires June 11/77

My Commission expires

PROVINCE OF QUEBEC }  
CITY OF MONTREAL } ss.:

On this 17 day of December 1976, before me personally appeared  
M. A. KATHAN and H. VALLE, to me personally known, who,  
being by me duly sworn, say that they are a Vice President and  
PRESIDENT, respectively of MLW INDUSTRIES (DIVISION OF ~~WORTHINGTON~~ BOMBARDIER  
MLW WORTHINGTON LIMITED), that one of the seals affixed to the  
foregoing instrument is the corporate seal of said corporation, that  
said instrument was signed and sealed on behalf of said corporation by  
authority of its Board of Directors and he acknowledged that the ex-  
ecution of the foregoing instrument was the free act and deed of said  
corporation.

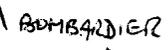
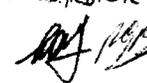


Commissioner of Oaths  
District - Montreal  
Commissaire A L'Assermentation

My Commission expires

R. G. Jenkins,  
Commissioner for Oaths  
Commissaire a l'Assermentation  
District - Montreal  
Expires June 1, 1977

**SCHEDULE A—SPECIFICATIONS OF THE EQUIPMENT**

<u>Builder</u>	<u>Plant Location</u>	<u>Type</u>	<u>Builder's Specification (Contract Number)</u>	<u>Quantity</u>	<u>Railroad's Road Numbers</u>	<u>Unit Purchase Price (\$U.S.)*</u>	<u>Total Purchase Price (\$U.S.)*</u>
 MLW Industries (Division of MLW Worthington Limited)	Montreal, Quebec	MLW 2,000 h.p. Diesel locomotives	MLW Specification M-420 MLW Inquiry 417-74 CN Specification R-20-D dated May 1973	20	CN 2560 through CN 2579, inclusive	\$442,999.73	\$ 8,859,994.60
  General Motors of Canada (Diesel Division)	London, Ontario	GP-40 3,000 h.p. Diesel locomotives	GM Specification DD 8091 dated 3 January 1972 GM Order No. C-396 CN Specification F-30-1 dated October 1975	20	CN 9648 through CN 9667, inclusive;	 <del>502,605.12</del> 505,245.81	 <del>10,052,102.40</del> 10,104,916.20
General Motors of Canada (Diesel Division)	London, Ontario	GP-40 3,000 h.p. Diesel locomotives	GM Specification DD 8091 dated 3 January 1972 GM Order No. C-396 CN Specification F-30-1 dated October 1975	15	CN 9638 through CN 9647, inclusive	 <del>502,907.92</del> 505,550.58	 <del>7,540,618.00</del> 7,583,258.70
General Motors of Canada (Diesel Division)	London, Ontario	SD-40 3,000 h.p. Diesel locomotives	GM Specification DD 8087 dated 3 January 1972 GM order No. C-389 CN Specification F-30-1 dated October 1975	15	CN 5279 through CN 5293, inclusive	 <del>574,595.03</del> 577,613.25	 <del>8,610,925.45</del> 8,664,198.75
							<u>886,074,641.25</u>
							35,212,368.25
							<u>921,287,009.50</u>

70

\* Computed at a rate of exchange of .983133 U.S. = one Canadian Dollar.

## SCHEDULE B

- Item 1:** (a) General Motors of Canada Limited (Diesel Division), having an address at 2021 Oxford Street, P.O. Box 5160, London, Ontario, Canada, Attention of Credit Manager;  
(b) MLW Industries (Division of <sup>COMBARDIER</sup> MLW Westinghouse Limited,) having an address at P.O. Box 1000, Place d'Arnes, Montreal, Quebec H2Y 3J7 Canada, Attention of Vice President—Finance



**Item 2:** Builders' Warranty

- (a) General Motors of Canada Limited (Diesel Division) (hereinafter in this Item 2 called Builder 1).

*Builder 1's Warranty of Materials and Workmanship.* Builder 1 warrants that the units of Equipment will be free from defects in material and workmanship under normal use and service; its obligation under this warranty being limited to making good at its factory any part or parts thereof, which shall be returned to it with transportation charges prepaid, within two (2) years after such equipment is put into service or within three (3) years from the date of delivery of such equipment, whichever period is shorter, or before the locomotive has been 250,000 miles in scheduled service, whichever event shall first occur, and which Builder 1's examination shall disclose to its satisfaction to have been thus defective. This warranty shall not apply to any locomotive components which shall have been repaired or altered unless repaired or altered by Builder 1 or its authorized service representatives, if, in its judgment, such repair or alterations affect the stability of the equipment or if the equipment has been subject to misuse, negligence or accident, nor shall it apply to specialties not of Builder 1's own specification or design. Builder 1 reserves the right to make changes in design or add any improvements on any unit of Equipment at any time without incurring any obligation to install same on any unit of equipment previously purchased. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND OF ALL OTHER OBLIGATIONS OR LIABILITIES ON THE PART OF BUILDER 1, EXCEPT FOR ITS OBLIGATIONS UNDER ARTICLES 2, 3 AND 14 OF THIS AGREEMENT. Builder 1 neither assumes nor authorizes any person to as-

sume for it any other liability in connection with the sale of the Equipment, except as aforesaid.

Builder 1 further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3, shall be deemed a waiver or modification by the Railroad and/or the Trustee of any of their rights under this Item 2.

(b) MLW Industries (Division of <sup>BOMBARDIER</sup> MLW ~~Washington~~ Limited) (hereinafter in this Item 2 called Builder 2).

*Builder 2's Warranty of Materials and Workmanship.* Builder 2 warrants that the units of the Equipment will be built in accordance with the Specifications and with other requirements, specifications and standards set forth or referred to in Schedule A of this Agreement, and that the Equipment (including such components as may be manufactured by other manufacturers and supplied as part of the Equipment) will be free at time of delivery from defects in material, workmanship and manufacture under normal use and service. Builder 2's liability under this warranty is limited to repair or replace at its option any part or parts of any unit of the Equipment which Builder 2's examination shall disclose to have been thus defective; Builder 2's liability under this warranty or otherwise in connection with the supply or use of the equipment shall not exceed the cost of repairing or replacing such defective part or parts f.o.b. its plant, and shall not include transportation charges, the Railroad's labor or materials (except as authorized in writing in advance), loss of use or revenue, or any indirect or consequential damages.

Builder 2's liability hereunder shall be conditional upon immediate notification of any defect which may arise and shall not extend to any defect or defects which are caused in whole or in part by failure to comply with Builder 2's operating and maintenance recommendations, by misuse, negligence or accident or alterations not authorized or approved by Builder 2. Builder 2 does not guarantee materials or parts specified or furnished by the Railroad and not included in Builder 2's standard specification.

Builder 2's liability hereunder shall be limited to a period of three years from the date of delivery of the unit of Equipment

or 250,000 miles running, whichever first occurs. Upon expiration of the said periods, all liability with respect to the Equipment, including any part or parts repaired or replaced by reason of this warranty, shall terminate. Builder 2 reserves the right to replace the defective part or parts by others of improved design, material and manufacture if, in Builder 2's opinion, these parts offer advantages for operation and maintenance subject to prior notification to the Railroad.

**THE WARRANTY HEREINBEFORE PROVIDED IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS TO TITLE.**

Builder 2 further agrees that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3, shall be deemed a waiver or modification by the Railroad and/or the Trustee of any of their rights under this Item 2.