

5712

COPY

RECORDATION NO. \_\_\_\_\_ Filed & Recorded

EQUIPMENT OBLIGATION

MAY 11 1970 1:00 PM

(Purchase Money Security Agreement and Mortgage)

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, dated as of May 1, 1970, between NATIONAL BANK OF DETROIT, a national banking association, with its principal offices in Detroit, Michigan 48232 (hereinafter called "Mortgagee"), and DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, a corporation of the State of Michigan (hereinafter called "Mortgagor"), whose principal place of business is 131 West Lafayette, Detroit, Michigan 48226;

WHEREAS, Mortgagor has agreed to purchase with the proceeds of the Mortgage Indebtedness and to become the owner of and take possession of certain railroad equipment more particularly described in Schedule A hereto (hereinafter called the "Equipment"),

NOW, THEREFORE, Mortgagor does hereby mortgage to Mortgagee the said Equipment as security for the payment by Mortgagor to Mortgagee of the sum of Four Hundred Fifty Thousand and no/100 (\$450,000.00) Dollars (herein called "Mortgage Indebtedness"), receipt of which sum is hereby acknowledged by Mortgagor, and as security for the performance by Mortgagor of all obligations and promises to be performed by Mortgagor as hereinafter stated, on the following terms and conditions:

ARTICLE 1. Mortgage Indebtedness and Payment. Mortgagor hereby acknowledges itself to be indebted to Mortgagee in the amount of, and hereby promises to pay in cash to, Mortgagee at such place as Mortgagee may designate, the Mortgage Indebtedness in ten consecutive equal semi-annual installments (hereinafter called "Installment Indebtedness") commencing on November 1, 1970, and continuing each May 1 and November 1 thereafter until May 1, 1975.

The unpaid portion of the Installment Indebtedness shall bear interest from the date hereof at the rate of eight and one-half per cent (8-1/2%) per annum. Such interest shall be payable, to the extent accrued, on the dates for the payment of installments of Installment Indebtedness, as set forth above.

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

Mortgagor shall have the right (and Mortgagee agrees that no assignment, sale or transfer of any or all of its rights hereunder shall impair that right), on any semi-annual installment payment date, provided Mortgagor

shall have given not less than thirty days' prior written notice of its intention to do so, to make payment of the entire unpaid balance of the Mortgage Indebtedness then remaining on all but not less than all of the Equipment, plus interest accrued to such date of payment. Mortgagee agrees (for itself and any assignee of its interest hereunder) that such payment will be accepted in full discharge of all of Mortgagor's obligations hereunder.

Mortgagor will pay, to the extent legally enforceable, interest at the rate of nine and one-quarter per cent (9-1/4%) 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.

ARTICLE 2. Taxes. All payments to be made by the Mortgagor hereunder will be free of expense to the Mortgagee for collection of other charges and will be free of expense to the Mortgagee in respect of the amount of any local, state or federal taxes (other than net income, excess profits and similar taxes) or licenses hereafter levied or imposed upon, or measured by, this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and licenses the Mortgagor assumes and agrees to pay on demand in addition to any indebtedness hereunder. The Mortgagor will also pay promptly all taxes and assessments which may be imposed upon the equipment, or for the use or operation thereof by the Mortgagor, or upon the earnings arising therefrom, or upon the Mortgagee solely by reason of interest as Mortgagee, and will keep at all times all and every part of the Equipment free and clear of all taxes and assessments which might in any way affect the security interest of the Mortgagee or result in a lien upon any of the Equipment; provided, however, that the Mortgagor shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, licenses, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Mortgagee, adversely affect the security interest of the Mortgagee hereunder. If any such expenses, taxes, assessments, licenses, charges, fines or penalties shall have been charged or levied against the Mortgagee directly and paid by the Mortgagee, the Mortgagor shall reimburse the Mortgagee on presentation of invoice therefor; provided, however, that the Mortgagor shall not be obligated to reimburse the Mortgagee for any expenses, taxes, assessments, licenses, charges, fines or penalties so paid unless the Mortgagee shall have been legally liable in respect thereof, or unless the Mortgagor shall have approved the payment thereof.

ARTICLE 3. Security Interest in Equipment. The Mortgagor hereby mortgages and grants and confirms to the Mortgagee a purchase money security interest in the Equipment and Mortgagor agrees that Mortgagee shall retain such security interest until the Mortgagor shall have made all of the payments for which it is liable under this Agreement, and shall have kept and performed all its agreements herein contained. 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 the security interest hereby created and included in the term "Equipment" as used in this Agreement.

When and only when the Mortgagee shall have been paid the Mortgage Indebtedness, together with interest and all other payments as herein provided, and all the Mortgagor's obligations herein contained shall have been performed by the Mortgagor, all interest of the Mortgagee in and to the Equipment shall terminate without further transfer of action on the part of the Mortgagee, except that the Mortgagee, if requested by the Mortgagor, will execute a satisfaction or release of Mortgage of the Equipment free of all liens and encumbrances created or retained hereby and deliver such satisfaction or release to the Mortgagor at its address specified in Article 19 hereof, and will execute in the same manner and deliver at the same place, for record or for filing 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 termination of any interest by Mortgagee in the Equipment, and will pay to the Mortgagor any money paid to the Mortgagee pursuant to Article 5 hereof and not thereto applied as therein provided. The Mortgagor 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 satisfaction or release 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 satisfaction or release or to file such certificate within a reasonable time after written demand by the Mortgagor.

ARTICLE 4. Marking of Equipment. Unless prohibited by prior obligations of Mortgagor, Mortgagor will cause to be plainly, distinctly, permanently and conspicuously marked by stenciling or otherwise, on each side of each unit of the Equipment, in letters not less than one inch in height, Mortgagee's name followed by the word "Mortgagee" or other appropriate words designated by Mortgagee with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the security interest of Mortgagee to the Equipment and its rights under this Agreement. Such mark shall be such as to be readily visible and as to indicate plainly Mortgagee's security interest in the Equipment. In case any of

the marks shall at any time be removed, defaced or destroyed, Mortgagor will immediately cause the same to be restored or replaced.

Mortgagor will not allow the names of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of a security interest; PROVIDED, HOWEVER, Mortgagor may permit the Equipment to be lettered "Detroit and Toledo Shore Line" or "D. & T. S. " or in some other appropriate manner for convenience of identification of the interest of Mortgagor therein or to indicate the nature of the service furnished thereby.

ARTICLE 5.        Replacement.    In the event that any unit of the Equipment shall be worn out, lost, destroyed or irreparably damaged from any cause whatsoever prior to the payment of the full indebtedness in respect of the Mortgage Indebtedness, together with interest, thereon and all other payments required hereby, Mortgagor shall promptly and fully inform Mortgagee in regard thereto. When any of the units shall have become worn out, lost, destroyed or irreparably damaged, Mortgagor shall pay to Mortgagee, within sixty (60) days thereafter, a sum equal to the total value, determined as hereinafter provided, of such unit and Mortgagee shall not thereafter have any interest in any materials salvageable from such unit. For all purposes of this Article 5, the value of any unit worn out, lost, destroyed or irreparably damaged shall be the greater of \$25,000 or the cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, less, in either case, allowance for depreciation (but not any accelerated amortization), at a rate not in excess of 10% per annum, for the period elapsed since the date hereof in respect of such unit to the date of its wearing out, loss, destruction or irreparable damage. The cost of acquiring a similar unit at the time of such wearing out, loss, destruction or irreparable damage, and the applicable rate of depreciation, shall be determined by a certificate of the President, the Treasurer, an Assistant Treasurer, or the Superintendent of Motive Power and Equipment of the Mortgagor filed with Mortgagee at the time of the aforesaid payment and by such other and further evidence, if any, as shall reasonably be required by Mortgagee.

Any money paid to Mortgagee pursuant to the preceding paragraph of this Article 5 shall, as Mortgagor may direct in a written instrument filed with Mortgagee, at the time of such payment, be applied in whole or in part, (i) to repay the installments of indebtedness payable pursuant to the first paragraph of Article 1, without premium, in the inverse order of their maturity, with interest (payable by Mortgagor on the date of such application) to the date of payment at the rate applicable to such installments as provided in the second

paragraph of Article 1 hereof, or (ii) to or towards the cost of new rolling stock to replace such unit or units worn out, lost, destroyed or irreparably damaged.

Mortgagor will cause any replacing unit or units to be marked as provided in Article 4 hereof. A security interest in all such replacements shall be vested in Mortgagee, and shall be taken initially and shall be subject to the provisions hereof in all respects as though part of the original Equipment mortgaged hereunder. Mortgagor shall execute, acknowledge, deliver, file, register and record all such documents and do any and all acts as may be necessary or Mortgagee shall reasonably request to cause such replacements to come under and be subject to this Agreement and to protect the security interest of Mortgagee therein.

ARTICLE 6. Maintenance and Repair. Mortgagor will at all times, maintain, or cause the Equipment to be maintained, in good order and repair without expense to Mortgagee.

ARTICLE 7. Compliance with Laws and Rules. During the term of this Agreement Mortgagor will comply with all lawful rules of the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the Equipment; and in the event that such laws or rules require the alteration of the Equipment, Mortgagor will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; PROVIDED, HOWEVER, that Mortgagor 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 Mortgagee, adversely affect the property or rights of Mortgagee hereunder.

ARTICLE 8. Reports and Inspections. On or before May 1 in each year, commencing with the year 1971, Mortgagor, if requested by Mortgagee, will furnish, or cause to be furnished, to Mortgagee an accurate statement showing, as at the preceding December 31, the amount and description of all units of the Equipment that may have been worn out, lost, destroyed or irreparably damaged, whether by accident or otherwise, during the preceding calendar year (and in the case of the first such statement, since the time Mortgagor acquired possession of each such unit of Equipment), the number of units then undergoing repairs and awaiting repairs, and such other information regarding the condition and state of repair of the Equipment as Mortgagee may reasonably request. Together with such statement signed by the President or the Superintendent of Motive Power and Equipment of

Mortgagor, stating that, in the case of all Equipment repainted during the preceding calendar year, the marks required by Article 4 hereof have been preserved or replaced. Mortgagee shall have the right, by its agent, but shall be under no obligation, to inspect the Equipment and the records of Mortgagor with respect thereto at any reasonable time during the continuance of this Agreement; PROVIDED, HOWEVER, that in the event Mortgagee exercises such right of inspection of the Equipment, it shall first give notice in writing to Mortgagor's Superintendent of Motive Power and Equipment of its desire in that respect so that the Equipment can be marshalled and spotted in a convenient and suitable location for such inspection, and PROVIDED FURTHER, that Mortgagor assumes no liability for injury to or death of any agent or employee of Mortgagee incurred while exercising any such right of inspection and Mortgagee agrees to protect, indemnify and save harmless Mortgagor therefrom.

ARTICLE 9. Possession and Use. Mortgagor, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the Equipment and to the use thereof upon the lines of railroad owned or operated by it or over which it has trackage or other operating rights and upon connecting and other railroads in the usual interchange of traffic.

ARTICLE 10. Prohibition Against Future Liens. Mortgagor will pay or cause to be paid, or otherwise satisfy and discharge, any and all sums claimed by any party by, through or under Mortgagor or its successors or assigns (including any lessee or user) which, if unpaid, might hereafter become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the security interest of Mortgagee thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the non-payment thereof does not, in the opinion of Mortgagee, adversely affect the security interest of Mortgagee hereunder.

ARTICLE 11. Indemnities. Mortgagor agrees to indemnify and save harmless Mortgagee 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 the granting to or retention by Mortgagee of a security interest in the Equipment or out of the use and operation thereof by Mortgagor or any other person during the period when a security interest therein remains in Mortgagee.

This covenant of indemnity and the covenants set forth in Article 2 hereof shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Mortgage Indebtedness and the

termination of this Agreement, as provided in Article 3 hereof, or the termination of this Agreement in any manner whatsoever.

Mortgagor will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 12. Assignments. Mortgagor will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 9 hereof, transfer the right to possession of any unit of Equipment without first obtaining the written consent of Mortgagee.

All or any of the rights, benefits and advantages of Mortgagee under this Agreement, including the right to receive the payments herein provided to be made by Mortgagor, may be assigned by Mortgagee and reassigned by any assignee at any time or from time to time. No such assignment shall relieve Mortgagor of its obligations to Mortgagee under Articles 1, 3, 11 and 13 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to Mortgagor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of Mortgagee's right, title and interest in and to the Equipment, 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 Mortgagor of the notification of any such assignment, all payments thereafter to be made by Mortgagor hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

In the event of any such transfer or assignment, or successive transfers or assignments by Mortgagee, of Mortgagee's rights hereunder, Mortgagor will, at Mortgagor's expense, whenever requested by such transferee or assignee, change or cause the change of the markings to be maintained on each side of each unit of the Equipment so as to indicate the interest of such transferee or assignee to the Equipment, such markings to bear such words or legend as shall be specified by such transferee or assignee under the same terms and conditions set forth in Article 4 hereof.

Nothing in this Article 12 shall be deemed to restrict the right of Mortgagor to assign or transfer its obligations under this Agreement and its interest in the Equipment or possession of the Equipment to any corporation

(which shall have assumed the obligations hereunder of Mortgagor) into which or with which Mortgagor shall have become merged or consolidated or which shall have acquired the property of Mortgagor as an entirety or substantially as an entirety.

ARTICLE 13. Defaults. In the event that any one or more of the following events of default (hereinafter called "events of default") shall occur and be continuing, to wit:

(a) Mortgagor shall fail to pay in full any sum payable by it as herein provided within ten (10) days after the mailing by Mortgagee to it of notice of such failure; or

(b) Mortgagor shall refuse, or for more than thirty (30) days after Mortgagee shall have demanded in writing performance thereof shall fail, to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provisions satisfactory to Mortgagee for such compliance; or

(c) Any proceedings shall be commenced by or against Mortgagor for the appointment of a receiver or receivers or for any relief under any bankruptcy or insolvency law or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a proceeding which does not seek any readjustment or impairment of any obligations contained in this Agreement) or Mortgagor shall suffer any involuntary transfer of its interest in and under this Agreement by bankruptcy or by the appointment of a receiver or trustee or by execution or by any judicial or administrative decree or process shall within thirty (30) days from the effective date thereof be nullified, stayed or otherwise rendered ineffective, and all the obligations of Mortgagor under this Agreement shall not have been either duly assumed in writing pursuant to a court order or decree by a trustee or trustees or receiver or receivers appointed for Mortgagor 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 a trustee or trustees or receiver or receivers, within thirty (30) days after such appointment, if any, or sixty (60) days after such proceedings shall have been commenced, whichever shall be earlier

(unless such proceedings shall have theretofore been dismissed, or discontinued); or

(d) Mortgagor shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the title of or right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default Mortgagee may, upon written notice to Mortgagor and upon compliance with any mandatory requirements of law applicable to such action by Mortgagee, declare the entire indebtedness in respect of the Mortgage Indebtedness together with 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 at the rate of nine and one-quarter per cent (9-1/4%) per annum, to the extent legally enforceable, and Mortgagee shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Mortgage Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of Mortgagor wherever situated.

Mortgagee may at its election waive any such event of default and its consequences and rescind and annul any such declaration by notice to Mortgagor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Mortgagor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 14. Remedies. If any event of default shall occur, then at any time after the entire indebtedness in respect of the Mortgage Indebtedness shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such default, the Mortgagee, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by Mortgagee, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof, without liability to return to Mortgagor any sums theretofore paid and free from all claims of Mortgagor whatsoever, except as herein-after in this Article 14 expressly provided, and may remove the same from possession and use of Mortgagor or any other person, and for such purpose

may enter upon premises of Mortgagor where any of the Equipment may be located and may in connection with such removal use any facilities of Mortgagor without process of law. In case Mortgagee shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the premises of Mortgagor for the delivery of the Equipment to Mortgagee, Mortgagor shall, at its own expense, forthwith cause the Equipment to be moved to such point or points as shall be designated by Mortgagee and shall there deliver the Equipment or cause it to be delivered to Mortgagee; and, at the option of Mortgagee, Mortgagee may keep the Equipment on any of the premises of Mortgagor until Mortgagee shall have leased, sold or otherwise disposed of the same, and for such purpose Mortgagor agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by Mortgagee reasonably convenient to Mortgagor. This Agreement to deliver the Equipment 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, Mortgagee shall be entitled to a decree against Mortgagor requiring specific performance hereof. Mortgagor hereby expressly waives any and all claims against Mortgagee 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.

If an event of default shall occur, then and at any time thereafter during the continuance of such default Mortgagee may proceed or exercise one or more, or all of the Mortgagor's rights and remedies under any contract relating to the use of any of the Equipment, and in such event may collect any payments due thereunder. Treating any contract as continuing in effect and continuing to collect the payments thereunder shall not be deemed to be an election of remedies so as to prevent Mortgagee from declaring such contract terminated, or exercising any other remedy available to Mortgagee. If Mortgagee shall so terminate the contract relating to the use of any of the Equipment, it shall be entitled to collect all unpaid sums due and payable to Mortgagor, and may lease or license the use of the Equipment or any units thereof upon such terms, in such manner and to such persons as it shall see fit, without notice to or consent by Mortgagor, and collect all rentals and other sums payable under any such lease or license.

If any event of default shall occur, then at any time thereafter during the continuance of such default and after the entire indebtedness in respect of the Mortgage Indebtedness shall have been declared immediately due and payable as hereinbefore provided, Mortgagee (after retaking possession of the Equipment as hereinbefore in this Article 14 provided) may at its election retain the Equipment as its own and make such disposition thereof as Mortgagee shall deem fit, and, in such event, all Mortgagor's rights in the Equipment will thereupon terminate

and, to the extent not prohibited by any mandatory requirements of law, all payments made by Mortgagor may be retained by Mortgagee as compensation for the use of the Equipment by Mortgagor; provided, however, that if Mortgagor, within twenty (20) days of receipt of notice of Mortgagee's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to Mortgagee the total unpaid balance of the indebtedness in respect of the Mortgage Indebtedness, together with interest thereon accrued and unpaid and all other payments due by Mortgagor under this Agreement, then in such event Mortgagee's right to the possession of and property in such Equipment shall pass to and vest in Mortgagor; or Mortgagee, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of Mortgagor, at law or in equity, at public or private sale and with or without advertisement as Mortgagee may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less attorney's fees and any other expenses incurred by Mortgagee in taking possession of, removing, storing and selling the Equipment, and less amounts due on any superior liens on said Equipment, shall be credited on the amount due to Mortgagee under the provisions of this Agreement. Written notice of Mortgagee's election to retain the Equipment for its own use may be given to Mortgagor by telegraph or registered mail addressed to Mortgagor as provided in Article 19 hereof, at any time during a period of thirty (30) days after the entire indebtedness in respect of the Mortgage Indebtedness shall have been declared immediately due and payable as hereinbefore provided; and if no such notice shall have been given, Mortgagee shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 14.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale of the Equipment hereunder may be held or conducted at Detroit, Michigan, at such time or times as Mortgagee may fix (unless Mortgagee shall specify a different place or places, in which case the sale shall be held at such place or places and at such time or times as Mortgagee 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 Mortgagee may determine, in compliance with any such requirements of law, provided that Mortgagor shall be given written notice of such sale as provided in any such requirements, but in any event not less than ten (10) days prior thereto, by telegram or registered mail addressed to Mortgagor as provided in Article 19 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of Mortgagor to purchase or provide a purchaser, within ten (10) days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, Mortgagee may itself bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to Mortgagor (except to the extent of surplus money received as hereinafter provided in this Article 14), and in payment of the purchase price therefor Mortgagee shall be entitled

to the extent not prohibited as aforesaid to have credited on account thereof all sums due to Mortgagee from Mortgagor hereunder.

Each and every power and remedy hereby specifically given to Mortgagee 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 Mortgagee. 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 Mortgagee 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.

If, after applying all sums of money realized by Mortgagee under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, Mortgagor shall pay the amount of such deficiency to Mortgagee upon demand, and if Mortgagor shall fail to pay such deficiency, Mortgagee may bring suit therefor and shall be entitled to recover a judgment therefor against Mortgagor. If, after applying as aforesaid all sums realized by Mortgagee, there shall remain a surplus in the possession of Mortgagee, such surplus shall be paid to Mortgagor or other person legally entitled thereto.

Mortgagor will pay all reasonable expenses, including attorney's fees, incurred by Mortgagee in enforcing its remedies under the terms of this Agreement. In the event that Mortgagee shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit Mortgagee may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of assignments of interest hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of Mortgagee hereunder in respect of the security interest assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

ARTICLE 15. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than a chattel mortgage, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by Mortgagor to the full extent permitted by law, to the end that this Agreement shall be deemed to be an Agreement of chattel mortgage and enforced as such.

Except as otherwise provided in this Agreement, Mortgagor, to the fullest extent permitted by law, hereby waives all statutory or other legal

requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of Mortgagee's rights hereunder and any and all rights of redemption.

ARTICLE 16. Extension Not a Waiver. No delay or omission in the exercise of any power or remedy herein provided or otherwise available to Mortgagee shall impair or affect Mortgagee's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to Mortgagor shall not otherwise alter or affect Mortgagee's rights or Mortgagor's obligations hereunder. Mortgagee's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect Mortgagor's obligations or Mortgagee's rights hereunder with respect to any subsequent payments or any prior or subsequent default hereunder.

ARTICLE 17. Recording. Mortgagor will cause this Agreement and any assignments hereof, and any supplements hereto or thereto, to be filed and recorded in accordance with the terms of the Michigan Uniform Commercial Code in order to publish notice of and to protect the security interest of Mortgagee in the Equipment; and Mortgagor will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record any and all further instruments required by law or reasonably requested by Mortgagee for the purpose of proper protection, to the satisfaction of counsel for Mortgagee, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and Mortgagor will promptly furnish or cause to be furnished to Mortgagee certificates or other evidences of such filing, registration and recording with respect thereto, satisfactory to Mortgagee.

ARTICLE 18. Payment of Expenses. In case any assignment of this Agreement is to an agent (including counsel fees) in connection with any such assignment, any agreement pursuant to which such agent is acting and the performance by such agent or successor agent of its duties under such agreement. In addition, Mortgagor will pay all stamp and other taxes, and will also pay the expenses of printing or other duplicating, execution, acknowledgment, delivery, filing, registration or recording of this Agreement, of the first assignment by Mortgagee of this Agreement, of any instrument supplemental to or amendatory of this Agreement, or such assignment, and of any certificate of the payment in full of the indebtedness in respect of the Mortgage Indebtedness due hereunder.

ARTICLE 19. Notice. Any notice hereunder to Mortgagor shall be deemed to be properly served if delivered or mailed to Mortgagor at 131 West Lafayette Avenue, Detroit, Michigan 48226, or at such other address as

may have been furnished in writing by Mortgagor to Mortgagee. Any notice hereunder to Mortgagee shall be deemed to be properly served if delivered or mailed to Mortgagee at 611 Woodward Avenue, Detroit, Michigan 48232, or at such other address as may have been furnished in writing to Mortgagor by Mortgagee. Any notice hereunder to any assignee of Mortgagee or of Mortgagor shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to Mortgagor or Mortgagee, as the case may be, by such assignee.

ARTICLE 20. Article Headings. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 21. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Michigan.

ARTICLE 22. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated May 1, 1970, for convenience, the actual date or dates of execution hereof by the parties hereto is, or are, respectively the date or dates stated in the acknowledgments hereto annexed.

ARTICLE 23. Effect and Modification. This Agreement exclusively and completely states the rights of Mortgagee and Mortgagor with respect to the Equipment and Mortgagee's rights therein and supersedes all other agreements, between Mortgagee and Mortgagor, oral or written, in such respect. No variation 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 Mortgagee and Mortgagor.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority have caused these presents to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the day, month and year first above written.

ATTEST

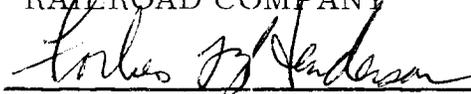
  
\_\_\_\_\_  
T. J. Dix, Assistant Vice President

ATTEST:

  
\_\_\_\_\_  
Secretary

NATIONAL BANK OF DETROIT

By   
\_\_\_\_\_  
J. T. Walton, Vice President  
DETROIT AND TOLEDO SHORE LINE  
RAILROAD COMPANY

By   
\_\_\_\_\_  
Vice President

STATE OF MICHIGAN )  
 ) SS.  
COUNTY OF WAYNE )

On this 6 day of MAY, 1970, before me, a notary public in and for said county, appeared T. WALTON and T. J. DIX to me personally known, who being by me sworn, did each for himself say that they are respectively the Vice President and Assistant Vice President of NATIONAL BANK OF DETROIT, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said J.T. Walton and T.J. Dix acknowledged said instrument to be the free act and deed of said corporation.

Frederick E. Jones  
Notary Public, Wayne County, Michigan

My commission expires: FREDERICK E. JONES  
Notary Public, Oakland County, Mich.  
Acting in Wayne County  
My commission expires Aug. 13, 1972

STATE OF MICHIGAN )  
 ) SS.  
COUNTY OF WAYNE )

On this 5th day of May, 1970, before me, a notary public in and for said county, appeared FORBES B. HENDERSON and ROBERT L. LIVESAY to me personally known, who being by me sworn, did each for himself say that they are respectively the Vice President and Secretary of DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY, the corporation named in and which executed the within instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said FORBES B. HENDERSON and ROBERT L. LIVESAY acknowledged said instrument to be the free act and deed of said corporation.

Mary B. MacDonald  
Notary Public, Wayne County, Michigan

My commission expires: \_\_\_\_\_  
MARY B. MacDONALD  
Notary Public, Wayne County, Mich.  
My Commission Expires Oct. 19, 1971

SCHEDULE A

Annexed to Equipment Obligation  
(Purchase Money Security Agreement and Mortgage)

Dated as of May 1, 1970

Between Detroit and Toledo Shore Line Railroad Company,  
as Mortgagor, and National Bank of Detroit, as Mortgagee

DESCRIPTION OF EQUIPMENT

27 New 60' Box Cars, bearing D&TS numbers 5410 to 5415,  
inclusive, and 5543 to 5563, inclusive, built by American  
Car and Foundry Company of St. Louis, Missouri.

-----