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MAR 11 1971 -4 25 PM
INTERSTATE COMMERCE COMMISSION

# CONDITIONAL SALE AGREEMENT

*Dated as of March 1, 1971*

Between

WESTERN MARYLAND COMPANY

and

WESTERN MARYLAND RAILWAY COMPANY

# AGREEMENT AND ASSIGNMENT

*Dated as of March 1, 1971*

Between

WESTERN MARYLAND COMPANY

and

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY,
*As Agent*

**CONDITIONAL SALE AGREEMENT,** dated as of March 1, 1971, between WESTERN MARYLAND COMPANY, a Maryland corporation (hereinafter called the Vendor or Builder, as more particularly set forth in Article 26 hereof), and WESTERN MARYLAND RAILWAY COMPANY, a consolidated corporation organized under the laws of Maryland and Pennsylvania (hereinafter called the Railroad).

WHEREAS, the Builder has agreed to construct or cause to be constructed, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule B attached 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. *Incorporation of Model Provisions.* Whenever this Agreement incorporates herein by reference, in whole or in part or as hereby amended, any provision of the document entitled "Model Conditional Sale Provisions" annexed to this Agreement as Part I of Annex A hereto (hereinafter called the Model CSA Provisions), such provision of the Model CSA Provisions shall be deemed to be a part of this instrument as fully to all intents and purposes as though such provision had been set forth in full in this instrument.

ARTICLE 2. *Construction and Sale.* Pursuant to this Agreement, the Builder will construct or cause to be constructed the Equipment and will sell and deliver the Equip-

ment to the Railroad and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be constructed in accordance with the specifications referred to in Schedule B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B 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, in accordance with the delivery schedule set forth in Schedule B hereto.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the date set forth in

Item 2 of Schedule A hereto shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the 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, 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 the 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.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad. 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 the 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.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume with respect thereto 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 any unit of or all the Equipment.

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest, are set forth in Schedule A hereto. The base price or prices, which may include freight charges, if any, from the Builder's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, and includes the value of reusable parts owned by the Builder (hereinafter called the Value of Reusable Parts Included in Purchase Price).

For the purpose of making settlement, the Equipment shall be divided into such number of Groups of units of the Equipment, delivered to and accepted by the Railroad (each such Group being hereinafter called a Group) as the Builder 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 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 (i) an amount equal to the Value of Reusable Parts Included in Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price less the Value of Reusable Parts Included in 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 Interim Invoiced Purchase Prices), exceeds (y) the sum of $1,650,000 and any

amount or amounts previously paid or payable with respect to the Interim Invoiced Purchase Price pursuant to this clause (ii) of this subparagraph (a) (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount);

(b) Within three business days following receipt of a final certificate or certificates of aggregate Purchase Price (hereinafter called the Final Certificate) of all Groups of the Equipment, the amount, if any, by which the final aggregate Purchase Price of such Groups, as stated in the final invoice therefor (hereinafter called the Final Invoiced Purchase Price), shall exceed that portion of the Final Invoiced Purchase Price paid or to be paid pursuant to subparagraphs (a) and (c) of this paragraph; and

(c) In 10 equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this subparagraph (c) shall not, when divided by 10, result in an amount ending in an integral cent) annual instalments, as hereinafter provided, an amount (hereinafter called the Conditional Sale Indebtedness) equal to the aggregate of the Interim Invoiced Purchase Prices of all the Equipment less the amount paid or payable pursuant to subparagraph (a) of this paragraph.

If this Agreement shall be assigned by the Builder, the obligations of the Railroad under subparagraphs (a) and (b) of the preceding paragraph of this Article 4 shall be an unsecured obligation and the Builder shall not have any lien on, or claim against, the Equipment or any part thereof with respect to such obligations.

The first instalment of the Conditional Sale Indebtedness payable pursuant to subparagraph (c) of the third

paragraph of this Article 4 shall be payable on March 15, 1972, and subsequent instalments shall be payable annually thereafter on March 15 of each year to and including March 15, 1981. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates at the rate of 8½% per annum. Such interest shall be payable semi-annually, to the extent accrued, on the fifteenth day of March and September in each year, commencing September 15, 1971.

The Final Certificate shall be delivered on or before March 15, 1972. The Builder agrees that the Interim Invoiced Purchase Prices shall be so fixed that they will not exceed, in the aggregate, the Final Invoiced Purchase Price.

The term "Closing Date" with respect to any Group of the Equipment shall mean such date (on or after April 1, 1971 and on or prior to March 15, 1972), not more than 30 business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for such Group, 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. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and holidays.

Interest under this Agreement shall be determined 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. 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.

ARTICLE 5. *Taxes.* Article 5 of the Model CSA Provisions is herein incorporated as Article 5 hereof.

ARTICLE 6. *Title to the Equipment.* Article 6 of the Model CSA Provisions is herein incorporated as Article 6 hereof.

ARTICLE 7. *Marking of Equipment.* Article 7 of the Model CSA Provisions is amended by deleting from the ninth line of the first sentence thereof the phrase "the name of the Vendor followed by the words "Agent, Owner" and substituting therefor the phrase "OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c". Article 7 is further amended by adding a new paragraph at the end thereof reading as follows:

> "Except as above provided, the Railroad will not allow the name of any person, association or corporation to be placed on 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 "Western Maryland Railway" or in some other appropriate manner for convenience of identification of the interest of the Railroad, or of any lessee of the Railroad, therein."

Article 7 of the Model CSA Provisions, as so amended, is herein incorporated as Article 7 hereof.

ARTICLE 8. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called Casualty Occurrences) 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, the Railroad shall promptly and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as herein defined) of units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) shall exceed $50,000, the Railroad, within 30 days of such event shall promptly pay to the Vendor a sum equal to the aggregate Casualty Value of such units as of the date of such payment and shall file with the Vendor a certificate of a Vice-President or the Treasurer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Vendor pursuant to the preceding paragraph of this Article 8 shall, so long as none of the events of default specified in Article 18 hereof shall have happened and be continuing, be applied, in whole or in part, as the Railroad may direct in a written instrument filed with the Vendor, to prepay instalments of indebtedness payable pursuant to subparagraph (c) of the third paragraph of Article 4 hereof or toward the cost of a unit or units of standard-gauge railroad equipment (other than passenger equipment or work equipment of types other than locomotives) first put into service no earlier than March 1, 1971, to replace such unit suffering a Casualty Occurrence. In case any money is applied to prepay Conditional Sale Indebtedness, it shall be so applied, on the instalment date next following receipt by the Vendor of such written direction, to prepay in whole or in part instalments thereafter falling due in the inverse order of maturity, but without premium.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence (other than a replacement

unit) shall be deemed to be that proportion of the Conditional Sale Indebtedness as the original Purchase Price thereof bears to the actual aggregate Purchase Price of all the Equipment, multiplied by a fraction the numerator of which is the number of instalment payment dates remaining pursuant to Article 4 hereof as of the date payment is made with respect to such Casualty Occurrence and the denominator of which is 10. The Casualty Value of each replacement unit suffering a Casualty Occurrence shall be deemed to be that proportion of the cost thereof (provided through the application of moneys paid to the Vendor pursuant to the first paragraph of this Article 8) as the number of instalment payment dates remaining pursuant to Article 4 hereof as of the date payment is made with respect to such Casualty Occurrence, bears to the number of such instalment payment dates remaining as of the date of the acquisition of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all the 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. Title to all such replacements shall be free and clear of all liens and encumbrances except permitted liens as defined in Article 14 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 or deposit all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Agreement and to protect the title of the Vendor to such Equipment. All such replacement units shall be guaranteed and warranted in like man-

ner as the original Equipment delivered hereunder, and the manufacturer or seller of such replacement units shall duly consent to the subjection thereof to this Agreement. Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith (i) a certificate of a Vice-President or the Treasurer of the Railroad that the cost of such unit or units does not exceed the fair value thereof and (ii) executed counterparts of an opinion of counsel covering the matters set forth in this paragraph.

So long as none of the events of default specified in Article 18 hereof shall have happened 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 direct obligations of the United States of America or any political subdivision thereof or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, or open market commercial paper rated prime or its equivalent by a national credit agency or in certificates of deposit of commercial banks in the United States of America having capital and surplus aggregating at least $50,000,000, in each case maturing in not more than one year from the date of such investment (hereinafter called Authorized Investments), as may be specified in such written direction. Any such obligations shall from time to time be sold and the proceeds reinvested in such Authorized Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Authorized Investments shall be held by the Vendor and applied as herein provided. Upon any sale or the maturity of any Authorized 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. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Authorized Investments.

If one of the events of default specified in Article 18 hereof shall have happened and be continuing, then so long as such event of default shall continue all money then held by the Vendor pursuant to this Article 8 (including for this purpose Authorized Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 19 hereof.

ARTICLE 9. *Maintenance and Repair.* 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.

ARTICLE 10. This Article is intentionally left blank.

ARTICLE 11. *Compliance with Laws and Rules.* Article 11 of the Model CSA Provisions is herein incorporated as Article 11 hereof.

ARTICLE 12. *Reports and Inspections.* Article 12 of the Model CSA Provisions is herein incorporated as Article 12 hereof.

ARTICLE 13. *Possession and Use.* Article 13 of the Model CSA Provisions is amended by adding a new paragraph at the end thereof reading as follows:

> "The Railroad, with the prior written consent of the Vendor may lease the Equipment to any other

railroad company; *provided, however,* that the rights of such other railroad company under such lease shall be expressly subordinated to the rights and remedies of the Vendor under this Agreement. A copy of any such lease shall be furnished to the Vendor."

Article 13 of the Model CSA Provisions, as so amended, is herein incorporated as Article 13 hereof.

ARTICLE 14. *Prohibition Against Liens.* Article 14 of the Model CSA Provisions is herein incorporated as Article 14 hereof.

ARTICLE 15. *Railroad's Indemnities.* Article 15 of the Model CSA Provisions is amended by adding a new paragraph at the end thereof reading as follows:

"The Railroad guarantees that the units of the Equipment have been or will be built in accordance with the Specifications and the other specifications, requirements and standards set forth in Article 2 hereof and warrants that the Equipment will be free from defects in material and workmanship under normal use and service."

Article 15 of the Model CSA Provisions, as so amended, is herein incorporated as Article 15 hereof.

ARTICLE 16. *Patent Indemnities.* The Railroad will indemnify, protect and hold harmless the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Vendor because of the use in or about the construction or operation

of the Equipment, or any unit thereof, of any design which infringes or is claimed to infringe on any patent or other right. The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the originator of any design or against the seller or sellers of any designs or articles or materials purchased or otherwise acquired by the Builder for use in or about the construction or operation of the Equipment, or any unit thereof, on the ground that any such design, article or material or operation thereof infringes or is claimed to infringe on any patent or other right and the Builder further agrees to execute and deliver to the Railroad all and every such further assurance as may be reasonably requested by the Railroad, more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

ARTICLE 17. *Assignments.* Article 17 of the Model CSA Provisions is amended by deleting therefrom in its entirety the second paragraph thereof and substituting therefor a new paragraph reading as follows:

> "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 an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to cause to be constructed and to deliver the Equipment in accordance herewith or relieve the Railroad of its

obligations to the Builder under Articles 3, 5, 15 and 16 hereof and subparagraphs (a) and (b) of the third paragraph of Article 4 hereof and this Article 17 or any other obligation which, according to its terms and context, is intended to survive an assignment."

Article 17 of the Model CSA Provisions, as so amended, is herein incorporated as Article 17 hereof.

ARTICLE 18. *Defaults.* Article 18 of the Model CSA Provisions is herein incorporated as Article 18 hereof.

ARTICLE 19. *Remedies.* Article 19 of the Model CSA Provisions is herein incorporated as Article 19 hereof.

ARTICLE 20. *Applicable State Laws.* Article 20 of the Model CSA Provisions is herein incorporated as Article 20 hereof.

ARTICLE 21. *Recording.* Article 21 of the Model CSA Provisions is herein incorporated as Article 21 hereof.

ARTICLE 22. *Payment of Expenses.* Article 22 of the Model CSA Provisions is herein incorporated as Article 22 hereof.

ARTICLE 23. *Notice.* Any notice hereunder to each 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 201 North Charles Street, Baltimore, Maryland 21201,

(b) to the Builder, at 201 North Charles Street, Baltimore, Maryland 21201,

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, 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. The Railroad represents and warrants that its chief place of business is in Maryland.

ARTICLE 24. *Article Headings; Effect and Modification of Agreement.* Article 24 of the Model CSA Provisions is herein incorporated as Article 24 hereof.

ARTICLE 25. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof 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 26. *Definitions.* Article 26 of the Model CSA Provisions is herein incorporated as Article 26 hereof.

ARTICLE 27. *Execution.* Although this Agreement is dated for convenience as of March 1, 1971, 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.

WESTERN MARYLAND COMPANY

By Norman C. Melvin
Vice President

ATTEST: H. Ward
Secretary

[CORPORATE SEAL]

WESTERN MARYLAND RAILWAY COMPANY

By Norman C. Melvin
Vice President

ATTEST: H. Ward
Secretary

[CORPORATE SEAL]

STATE OF MARYLAND
CITY OF BALTIMORE } ss.:

On this 16th day of March, 1971, before me personally appeared NORMAN C. MELVIN, to me personally known, who, being by me duly sworn, says that he is a Vice President of WESTERN MARYLAND 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL] Notary Public

My Commission expires July 1, 1974.

STATE OF MARYLAND
CITY OF BALTIMORE } ss.:

On this 16th day of March, 1971, before me personally appeared NORMAN C. MELVIN, to me personally known, who, being by me duly sworn, says that he is a Vice President of WESTERN MARYLAND 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL] Notary Public

My Commission expires July 1, 1974.

**SCHEDULE A**

Item 1: Western Maryland Company
201 North Charles Street
Baltimore, Maryland 21201

Item 2: March 15, 1972.

## SCHEDULE B

| Type | Specifications | Quantity | Railroad's Road Numbers (both inclusive) | Unit Base Price* | Total Base Price* | Delivery |
|---|---|---|---|---|---|---|
| 55-ton 31′ hopper car | Western Maryland Railway General Arrangement Drawing A-1263-F, dated 1/15/71 | 235 | 21319-21553 | $5,189 | $1,219,415 | January-December, 1971 |
| 70-ton 52′ 6″ gondola car | Western Maryland Railway General Arrangement Drawing A-1322-A, dated 1/15/71 | 147 | 55704-55850 | 7,045 | 1,035,615 | January-October, 1971 |
| 50-ton 40′ 6″ box car | Western Maryland Railway General Arrangement Drawing A-1301-A, dated 1/15/71 | 45 | 25111-25155 | 6,670 | 300,150 | October-December, 1971 |
| | | | Total ..... | | $2,555,180 | |

*Value of Reusable Parts Included in Purchase Price is $1,889 per unit for the hopper cars, $2,045 per unit for the gondola cars and $2,770 per unit for the box cars.

**AGREEMENT AND ASSIGNMENT,** dated as of March 1, 1971, between WESTERN MARYLAND COMPANY, a Maryland corporation (hereinafter called the Builder), and THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, with its chief place of business at 15th and Chestnut Streets, Philadelphia, Pennsylvania 19101, acting as Agent under an Agreement dated as of March 1, 1971 (hereinafter called the Finance Agreement), (said Bank, so acting, being hereinafter called the Assignee).

WHEREAS, the Builder and WESTERN MARYLAND RAILWAY COMPANY, a consolidated corporation organized under the laws of Maryland and Pennsylvania, with its chief place of business in Baltimore, Maryland (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of March 1, 1971 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the Conditional Sale Agreement (said equipment being hereinafter called the Equipment);

NOW, THEREFORE, THIS AGREEMENT AND ASSIGNMENT (hereinafter called this Assignment) WITNESSETH: That, in consideration of the sum of One Dollar ($1.00) and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers, and sets over unto the Assignee, its successors and assigns:

(a) All the right, title and interest of the Builder in and to each unit of the Equipment when and as

delivered and accepted and upon payment by the Assignee to the Builder of the amount required to be paid under Section 5 hereof with respect thereto;

(b) All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 3 thereof, in subparagraphs (a) and (b) of the third paragraph of Article 4 thereof and the last paragraph of Article 17 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) All the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to deliver the Equipment in accordance with the Conditional Sale Agreement or relieve the Railroad from its obligations to the Builder under Articles 3, 5, 15 and 16 of the Conditional Sale Agreement, it being understood and agreed that,

notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 17 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder covenants and agrees that it will construct and deliver the Equipment to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each and all of the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further covenants and agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment to the Railroad under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and the title to such unit was free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further covenants and agrees that it will defend the

title to such unit against the demands of all persons whomsoever based on claims originating prior to said delivery of such unit by the Builder to the Railroad; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 21 of the Conditional Sale Agreement have been effected of which fact the certificate of the Railroad shall constitute proof on which the Builder may rely.

The Builder covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Builder and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Builder under the Conditional Sale Agreement shall vest by reason of this Assignment or of successive assignments.

SECTION 3. The Builder will cause to be plainly, distinctly, permanently and conspicuously marked in stencil or otherwise on each side of each unit of the Equipment, at the time of delivery thereof to the Railroad, in letters not less than one inch in height, the following legend:

"OWNED BY A BANK OR TRUST COMPANY UNDER A SECURITY AGREEMENT FILED UNDER THE INTERSTATE COMMERCE ACT, SECTION 20c".

SECTION 4. Upon request of the Assignee, its successors and assigns, the Builder will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 5. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group of Equipment (as defined in said Article 4), shall pay to the Builder an amount equal to that portion of the Interim Invoiced Purchase Price (as defined in said Article 4) of such Group not required to be paid pursuant to subparagraphs (a) and (b) of the third paragraph of said Article 4, provided that there shall have been delivered to the Assignee the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to it and to its special counsel hereinafter mentioned:

(a) Bill of Sale from the Builder to the Assignee, transferring to the Assignee title to the units of the Equipment in such Group and warranting to the Assignee and to the Railroad that at the time of delivery to the Railroad under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and title to such units was

free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement;

(b) Certificate of Acceptance with respect to the units of the Equipment, as contemplated by Article 3 of the Conditional Sale Agreement;

(c) Invoice for the units of the Equipment in such Group in which the Value of Reusable Parts Included in Purchase Price (as defined in Article 4 of the Conditional Sale Agreement) is separately stated, accompanied by or having endorsed thereon a certification by the Railroad to the effect that the fair value of such units is not less than the cost thereof and that the prices of such units (and the Value of Reusable Parts Included in Purchase Price) as set forth in said invoice are correct;

(d) Opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and for the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement has been duly authorized, executed and delivered by the Assignee and the Railroad and is a legal and valid instrument binding upon such parties, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the respective parties thereto and is a valid and binding instrument enforceable in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the respective parties hereto and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to it by this Assignment, (v) title to the units of the Equipment

in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free of all claims, liens and encumbrances except only the rights of the Railroad under the Conditional Sale Agreement, (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the execution and delivery of the Finance Agreement, the Conditional Sale Agreement or this Assignment, and (vii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in the United States of America;

(e) Opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in subparagraph (d) above, and stating that the Railroad is a duly organized and existing consolidated corporation in good standing under the laws of Maryland and Pennsylvania, its states of incorporation, and has the power and authority to own its properties and to carry on its business as now conducted;

(f) Opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iv) and (v) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of the state of its incorporation and has the power and authority to own its properties and to carry on its business as now conducted and (ii) the Conditional Sale Agreement and this Assignment have been duly authorized, executed and delivered by the Builder and are legal and

valid instruments binding upon the Builder and enforceable against the Builder in accordance with their terms; and

(g) Unless payment of the amount payable pursuant to subparagraph (a) of the third paragraph of Article 4 of the Conditional Sale Agreement shall be made by the Assignee with funds furnished to it for that purpose by the Railroad, a receipt from the Builder for such payment.

In giving the opinions specified in subparagraphs (d), (e) and (f) of the first paragraph of this Section 5, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in subparagraph (d) of the first paragraph of this Section 5, counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinions of counsel for the Builder or counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, pursuant to the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect thereto.

The Assignee shall not be obligated to make any of the above-mentioned payments at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall be subsisting

under Article 18 of the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to any units of the Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

SECTION 6. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Builder hereby:

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

(b) covenants and agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may

be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

SECTION 8. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Maryland; *provided, however,* that the parties shall be entitled to all the rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing of the Conditional Sale Agreement and this Assignment as shall be conferred by the laws of the several jurisdictions in which the Conditional Sale Agreement or this Assignment shall be filed, recorded or deposited.

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

WESTERN MARYLAND COMPANY

By ... Norman C. Melin
Vice President

Attest: H. A. Ward
Secretary

[CORPORATE SEAL]

THE FIRST PENNSYLVANIA BANKING AND TRUST COMPANY, as Agent

By .....
Vice President

Attest:

.....
Assistant Secretary

[CORPORATE SEAL]

STATE OF MARYLAND }
CITY OF BALTIMORE } SS.:

On this 16th day of March, 1971, before me personally appeared NORMAN C. MELVIN, to me personally known, who, being by me duly sworn, says that he is a Vice President of WESTERN MARYLAND 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL]

My Commission expires July 1, 1974.

COMMONWEALTH OF PENNSYLVANIA }
COUNTY OF PHILADELPHIA } SS.:

On this 8th day of March, 1971, before me personally appeared W. M. KRAYER, to me personally known, who, being by me duly sworn, says that he is a Vice President of THE FIRST PENNSYLVANIA BANKING AND TRUST 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 he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

.....

[NOTARIAL SEAL]

My Commission expires

JUDITH Z. POTE
Notary Public, Philadelphia Co.
My Commission Expires January 23, 1974

## ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the Assignment made by, the foregoing Agreement and Assignment is hereby acknowledged as of March 1, 1971.

WESTERN MARYLAND RAILWAY COMPANY

By Norman C. Mellen
Vice President

**Form 1-1-70**

**ANNEX A**

***Part I***

## MODEL CONDITIONAL SALE PROVISIONS

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

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Railroad at the place or places specified in Schedule B hereto (or if Schedule B 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, in accordance with the delivery schedule set forth in Schedule B hereto.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the date set forth in Item 2 of Schedule A hereto shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the 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, 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 the 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.

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

Equipment in accordance with the standard quality control practices of the Builder. Upon completion of 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 the 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 the Builder shall not thereby be relieved of its warranty set forth or referred to in Article 10 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume with respect thereto 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 any unit of or all the Equipment; *provided, however,* that the Builder shall not thereby be relieved of its warranty set forth or referred to in Article 10 hereof.

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 or federal taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], excess profits and similar taxes) or license fees, fines or penalties 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 license fees, fines

and penalties the Railroad assumes and agrees to pay on demand in addition to the indebtedness in respect of the Purchase Price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment delivered to it or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof 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 title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, license fees, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such expenses, taxes, assessments, license fees, charges, fines or penalties 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; *provided, however,* that the Railroad shall not be obligated to reimburse the Vendor for any expenses, taxes, assessments, license fees, charges, fines or penalties 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 the full legal title to and property

in 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.

When and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, and all the 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 its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 23 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad 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 Equipment.* The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set out in Schedule B hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the name of the Vendor followed by the words "Agent, Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over any part thereof until such name and words shall have been so marked on each side thereof and will replace promptly any such name and words which may be removed, defaced or destroyed. The Railroad will not change the 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 and recorded by the Railroad in all public offices where this Agreement shall have been filed and recorded.

ARTICLE 11. *Compliance with Laws and Rules.* 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, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *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 12. *Reports and Inspections.* On or before March 31 in each year, commencing with the calendar year which begins after the expiration of 180 days from the date of this Agreement, 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 year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7

hereof have been preserved or replaced. 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.

ARTICLE 13. *Possession and Use.* The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, 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, from and after delivery of the Equipment by the Builder to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 14. *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 lien, charge or security interest upon the Equipment, or any unit thereof, equal or superior to the Vendor's title thereto or property therein, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 15. *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 retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of the Equipment or the termination of this Agreement in any manner whatsoever.

ARTICLE 16. *Patent Indemnities.* Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the 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 the Equipment because of the use in or about the construction or operation of any of the Equipment of

any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The 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 or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right. The 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 the 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 the Builder for use in or about the construction or operation of any of the Equipment, 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. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment 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. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the

Railroad from which liability may be charged against the Builder hereunder. Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 17. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 13 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. An assignment or transfer to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

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 the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to any of its warranties and indemnities under Articles 10 and 16 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 5, 10, 15 and 16 hereof and this Article 17 or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the 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.

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 purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the

Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of some of or all the Vendor's rights under this Agreement with respect thereto, the Railroad will, whenever requested by the assignee, change the markings on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment, such markings to be such as shall be specified by such assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of any assignment of less than all such Equipment, such cost shall be borne by such assignee.

In the event of any such assignment prior to settlement for all the Equipment, the Railroad will (a) in connection with each settlement for a Group of Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery by the Railroad of notice fixing the Closing Date with respect to such Group, 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 copies or 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 Builder and the assignee shall not make payment to the Builder with respect to units of the Equipment as provided

in the instrument making such assignment, the 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 the Builder the aggregate unpaid Purchase Price of such units, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect on the date such payment was due.

ARTICLE 18. *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 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) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall

continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions, 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 under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed 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

(e) 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; or

(f) an event of default shall occur under the Other Agreement or Agreements, if any, referred to and defined in Article 4 hereof;

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 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 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 property of the Railroad wherever situated.

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

ARTICLE 19. *Remedies.* At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor may, upon such further notice, if any, as may be required for 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 any unit thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 19 expressly provided, and may remove the same from 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, with or without process of law.

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, cause 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. 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, the necessary facilities at any

point or points selected by the Vendor reasonably convenient to the Railroad. 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 after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 19 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 23 hereof, and to any other persons to whom the law may require notice, within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. 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 Rail-

road, 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, 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 19.

At any time after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable as hereinbefore provided (unless such declaration has been rescinded and annulled as provided in Article 18 hereof), 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 New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. 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 23 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price

therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor 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, and, 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' 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' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 19 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifiying 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 21. *Recording.* The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto 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 counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 22. *Payment of Expenses.* The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 22, if the first assignee is an agent, then any successor agent to such agent shall also be considered the first assignee.

ARTICLE 24. *Article Headings; Effect and Modification of Agreement.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules and Annexes hereto, exclusively and completely states the rights of the

Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 26. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the corporation named in Item 1 of Schedule A hereto and any successor or successors for the time being to its manufacturing properties and business.

## MODEL ASSIGNMENT PROVISIONS

SECTION 3. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 21 of the Conditional Sale Agreement have been effected.

SECTION 4. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase

Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or under Article 10 or 16 of the Conditional Sale Agreement, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 17 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees to indemnify, protect and hold harmless the Assignee 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 Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 6. The Assignee, on each Closing Date fixed as provided in Article 4 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the purchase price thereof which, under the terms of said Article 4, is payable in instalments, provided that there shall have been delivered to the Assignee, as provided in Article 17 of the Conditional Sale Agreement and at least five business days prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee transferring to the Assignee title to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the

Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee and the Investors named in the Finance Agreement, dated as of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by such Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the

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

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (iii), (v), (vi) and (vii) of subparagraph (d) of this Section 6 and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms, (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder, (iv) the Assignee is vested with all the rights, titles, interests, powers, privileges and remedies purported to be assigned to the Assignee by this Assignment and (v) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement); and

(g) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 6) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 6, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms

by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, and as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad as to such matter.

The obligation of the Assignee hereunder to make payment for any Group of the Equipment is hereby expressly conditioned upon the prior receipt by the Assignee, as provided in the Finance Agreement, of all the funds to be furnished to the Assignee by the various parties to the Finance Agreement with respect to such Group. The Assignee shall not be obligated to make any above-mentioned payment at any time while an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement would constitute an event of default, shall be subsisting under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

It is understood and agreed that the Assignee shall not be required to make any payment with respect to, and shall have no right or interest in, any Equipment excluded from the Conditional Sale Agreement pursuant to Article 3 thereof.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays, and holidays.

SECTION 8. The Builder hereby:

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

(b) agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

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