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RECORDATION NO. _____ Filed & Record.

EXECUTED IN (10) PARTS

COUNTERPART NO. (9)

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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of March 1, 1971

among

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee,

and

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY

Covering sale and purchase of 22 Locomotives

CONDITIONAL SALE AGREEMENT dated as of March 1, 1971, among GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, (hereinafter called the Vendor or Manufacturer as more particularly set forth in Article 27 hereof), UNITED STATES TRUST COMPANY OF NEW YORK, a New York banking corporation acting as trustee under a Trust Agreement dated as of March 1, 1971, with Chemical Bank (said Trust Agreement being hereinafter called the Trust Agreement and said trustee being hereinafter called the Company), and THE KANSAS CITY SOUTHERN RAILWAY COMPANY, a Missouri corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Manufacturer agrees to construct, sell and deliver to the Company, and the Company agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS, the Company is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Manufacturer will construct the Equipment at its plant set forth in Annex B hereto and will sell f.o.b.

point of origin and deliver the Equipment to the Company and the Company will purchase from the Manufacturer and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Manufacturer, the Company and the Guarantor (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 reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Manufacturer will deliver the various units of the Equipment to the Company, at the point specified in, and in accordance with, the delivery schedule set forth in Annex B hereto; *provided, however,* that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

The Manufacturer's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Manufacturer'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, or delays in receiving necessary materials.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before May 15, 1971

(unless such date is extended by the Company, the Guarantor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder and (b) if such exclusion resulted from one or more of the causes referred to in the next preceding paragraph, a separate agreement shall be entered into between the Manufacturer and the Guarantor providing for the purchase of such excluded Equipment by the Guarantor, on the terms herein specified, payment to be made in cash on delivery of such Equipment either directly or by means of a conditional sale, equipment trust or such other appropriate method of financing the purchase as the Guarantor and the Manufacturer shall mutually determine.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor), and the Manufacturer shall grant to such inspectors or such authorized representatives reasonable access to its plant. From time to time upon the completion of the construction of a unit or a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the Specifications, such inspector or authorized representative shall execute and deliver to the Manufacturer, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof; *pro-*

vided, however, that the Manufacturer shall not thereby be relieved of its warranty contained in Item 1 of Annex A hereto.

On delivery of each of the units of Equipment by the Manufacturer to a carrier f.o.b. point of origin, the Lessee shall assume with respect thereto the responsibility and risk of loss or damage; *provided, however*, upon delivery of each of such units of Equipment hereunder and acceptance thereof on behalf of the Company at the point specified in Annex B hereto, the Company shall assume with respect thereto such responsibility and risk of loss or damage.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Manufacturer, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean such base price or prices per unit of the Equipment as so increased or decreased, plus freight charges, if any, from Manufacturer's plant to the point of delivery. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed \$5,100,000 (or such higher amount as the Company may at its option agree to), the Manufacturer (and any assignee of the Manufacturer) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Company, as will, after giving effect to such exclusion, reduce such aggregate Invoiced Purchase Prices under this Agreement to not more than \$5,100,000 (or such higher amount as aforesaid), and the Guarantor agrees to purchase any such unit or units so excluded from this

Agreement from Manufacturer for cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, if the Manufacturer and the Guarantor shall mutually agree, by means of a conditional sale, equipment trust or other appropriate method of financing.

For the purpose of settlement therefor, the Equipment shall be divided into not more than two group of units (each such group being hereinafter called a Group) unless the Company, the Guarantor and the Manufacturer shall otherwise agree. The term "Closing Date" with respect to any Group shall mean such date (not earlier than April 15, 1971 and not later than May 15, 1971), occurring not less than five business days following presentation by the Manufacturer to the Company and the Guarantor of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Manufacturer by written notice delivered to the Guarantor, the Company and the Assignee (as hereinafter defined) at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York or Pittsburgh, Pennsylvania are authorized to remain closed.

The Company 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 the Closing Date with respect to each Group (i) an amount equal to 20% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 80% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor

(said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of \$4,080,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a); and

(b) In 20 consecutive semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of the Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being herein called the Conditional Sale Indebtedness) shall be payable on November 15, 1976, and subsequent instalments shall be payable semiannually thereafter on May 15 and November 15 of each year to and including May 15, 1986 (or if any such date is not a business day on the next preceding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such Conditional Sale Indebtedness was incurred at the rate of $8\frac{1}{2}\%$ per annum and such interest shall be payable, to the extent accrued, on May 15 and November 15 of each year, commencing May 15, 1971 (or if any such date is not a business day on the next preceding business day). The principal amount of Conditional Sale Indebtedness payable on each of the 20 semiannual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 20 instalments of principal and interest will completely amortize the

Conditional Sale Indebtedness. The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

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

The Company will pay interest at the rate of 9% 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 5 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price for each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Manufacturer by an assignee of the Manufacturer's right, title and interest under this Agreement pursuant to an Agreement and Assignment dated the date hereof between the Manufacturer and Mellon National Bank and Trust Company, as Agent (such Agreement and Assignment being hereinafter called the Assignment and such assignee being herein called the Assignee or the Vendor as indicated in Article 27 hereof).

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant

to subparagraph (a) of the third paragraph of this Article 3 with respect to any Group of the Equipment is specifically subject to the following conditions:

(a) the documents required by Section 5 of the Assignment shall have been delivered as therein indicated;

(b) no event of default of the Guarantor specified herein nor an Event of Default (as defined in the Lease) of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease could constitute such an event of default or an Event of Default shall have occurred and be continuing; and

(c) the Company shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Company may reasonably request.

Notwithstanding any other provisions of this Agreement, it is understood and agreed by the Vendor that liability of the Company for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payment to be made pursuant to subparagraph (a) of the third paragraph of Article 3 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Company only to the extent that the Company or any assignee of the Company shall have actually received sufficient "income or proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Company in its capacity as trustee and the trust in respect of which the Company is acting as trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds

from the Equipment" to the extent actually received by the Company or any assignee of the Company as above provided. In addition, the Vendor agrees and understands that the Company (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) or of any of the Lessee's or the Guarantor's obligations thereunder and (ii) shall have no obligation, duty or other liability whatsoever to see to or be responsible for the performance or observance by the Lessee or the Guarantor of any of their agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Guarantor and the Equipment and to the Vendor's rights under the Lease against the Lessee, the Guarantor and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean, if one of the events of default specified in Article 17 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Company at any time after such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and (b) any and all payments or proceeds received by the Company for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and shall mean at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by the Company and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such

amounts indefeasibly received by the Company with respect thereto were required to be paid to it pursuant to the Lease; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were indefeasibly received by the Company prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts indefeasibly received by the Company with respect thereto were required to be paid to it pursuant to the Lease. Nothing contained herein shall constitute an assignment of, or lien, charge or encumbrance against, the "income and proceeds from the Equipment" or any right, title or interest of the Company under or arising out of the Lease, or of or against any payments received or to be received by the Company under or in connection with the Lease. It is further specifically understood and agreed that nothing contained herein limiting the liability of the Company shall derogate from the right of the Vendor to proceed against the Equipment or the Guarantor as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon. The Vendor agrees, however, that in the event it shall obtain a judgment against the Company for an amount in excess of the amounts payable by the Company pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to such amount.

ARTICLE 4. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to and property in the Equipment until the Company shall have made all the payments provided for hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the posses-

sion and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will, at the expense of the Company, execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will, at the expense of the Company, execute in the same manner 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 Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company 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 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 instruments or to file such certificate within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within ten days after it shall have determined that such unit has suffered a Casualty Occurrence (or as of such earlier date as the Company may receive notice thereof under the Lease), fully notify the Vendor (or cause the Vendor to be fully notified) in regard thereto. On the interest payment date for payment of interest on the Conditional Sale Indebtedness next succeeding such notice (or in the event such interest payment date shall occur within five days after such notice, on the following interest payment date) the Company shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate, signed by the President, Vice President or Treasurer of the Company, setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments will be substantially equal and will fully amortize the unpaid Conditional Sale Indebtedness.

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

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

Although the Guarantor shall not be required to maintain insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any insurance maintained by it upon the units of the Equipment will be made available to the Company and the Vendor, as their interests may appear, to the extent the Guarantor is permitted to do so under such policies of insurance.

ARTICLE 6. *Obligations of Guarantor.* The Guarantor, for value received, hereby unconditionally guarantees to

the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Company in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Company of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of the provisions of the last paragraph of Article 3 hereof of any other circumstances which might otherwise limit the recourse of the Vendor to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such

action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Company by reason of such payments and with respect to any units of the Equipment to the extent of the amount so paid, but such rights shall be subordinate in all respects to such rights of the Vendor and shall not be exercisable until the Vendor shall have been paid all sums payable under this Agreement (including the payment of the entire unpaid Conditional Sale Indebtedness and interest thereon).

ARTICLE 7. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

ARTICLE 8. *Reports and Inspections.* On or before April 15 in each year, commencing with the year 1972, the Company will cause to be furnished to the Vendor, in such number of counterparts as the Vendor may request, an accurate statement as of the preceding December 31 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment 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 units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept numbered with its identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the words

“MELLON NATIONAL BANK AND TRUST COMPANY,
PITTSBURGH, PENNSYLVANIA, 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 title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Company may cause the Equipment to be lettered “Kansas City Southern”, “KCS” or with the name of any affiliate of the Guarantor or with other names, initials or insignia customarily used by the Company or the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Company and the Guarantor therein.

ARTICLE 10. *Taxes.* All payments to be made by the Company 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, Canadian (Dominion or Provincial) or Mexican taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be levied upon the Equipment or for the use or operation thereof 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 impositions 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 Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of an invoice therefor.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and

will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation 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 operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company 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 Company 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 hereunder.

ARTICLE 12. *Possession and Use.* The Company, so long as it shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Manufacturer to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease but the rights of the Lessee and its permitted assigns (the Lessee hereby so acknowledging) under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however*, that so long as the Lessee shall not be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the Lessee shall be entitled to possession and use of the Equipment. The Company hereby agrees that it will not

exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing, the Company shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Company agrees not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Company may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the first sentence of this paragraph. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed by any party by, through or under the Company or its suc-

cessors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

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 14. *Indemnities and Warranties.* The Company 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, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment after delivery to and acceptance thereof by it hereunder.

The provisions relating to the Manufacturer's warranty of material and workmanship set forth in Item 1 of Annex A hereto are herein incorporated as part of this Article 14.

ARTICLE 15. *Patent Indemnities.* The provisions relating to patent indemnification set forth in Item 2 of Annex A hereto are herein incorporated as Article 15 hereof.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in such event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Company and the Guarantor).

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 Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and re-assigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Manufacturer from, any of the obligations of the Manufacturer to construct and to deliver the Equipment in accordance herewith or to respond to its warranties and agreements contained or referred to in Articles 14 and 15 hereof and Annex A hereto, or relieve the Company or the

Guarantor of their respective obligations to the Manufacturer contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or in Annex A hereto, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, 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 Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all of 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 Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject

to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Manufacturer with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Manufacturer. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Manufacturer.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, replace the words marked on each side of each unit of the Equipment to indicate the title of an assignee to the Equipment with such words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such words for use on equipment covered by conditional sale agreements with respect to railroad equipment. The cost of marking such words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Manufacturer. The cost of marking such words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) shall be borne by the Guarantor.

The Company and the Guarantor will, in connection with settlement for any Group of the Equipment, deliver to the assignee, at the time of delivery by the Guarantor of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement,

in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

Notwithstanding the provisions of the last paragraph of Article 3 hereof, if the Manufacturer shall not receive on the Closing Date with respect to a Group of the Equipment the aggregate Purchase Price in respect of such Group, the Manufacturer will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of the Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after such Closing Date, purchase such Group from the Manufacturer for cash, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor 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 on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorgani-

zations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, 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 Company or the Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) 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 Guarantor 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 Guarantor 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

(e) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Company and the Guarantor each acknowledge the right of the Vendor to terminate the Lease) and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid 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 Purchase Price and such interest shall bear interest from the date of such declaration at the rate of 9% per annum and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company (subject to the provisions of the last paragraph of Article 3 hereof) or the Guarantor wherever situated. The Company or the Guarantor, as the case may be, shall promptly notify the Vendor in writing of any event which has come to its attention which constitutes, or would constitute but for the giving of notice and/or lapse of time, an event of default under this Agreement.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Com-

pany and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no Declaration of Default or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company and the Guarantor that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law 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 Company or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Guarantor or 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 Company or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved

to such point or points as shall be reasonably 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 of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this 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 Company and/or the Guarantor requiring specific performance hereof; *provided, however,* that if the Guarantor is in possession of the Equipment, the Vendor shall be entitled to such a decree only against the Guarantor. The Company and the Guarantor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may, at its election, but only if such election is expressed in writing and notice is given as hereafter in this paragraph provided, retain the Equipment in satisfaction of the entire 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 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 Company and the Guarantor 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 rights of the Company in the Equipment will thereupon terminate and all payments made by the Company or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Company, 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 Company; and *provided, further, however*, that if the Company 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.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof, at its election and upon reasonable notice to the Company, the Guarantor and 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 Company, or of any other party (including the Guarantor) claiming by, through or under the Company,

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 or prior to the making of a contract for such sale, the Company should tender full payment of the entire 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, holding and preparing the Equipment for disposition and arrangement 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 Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however*, that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale it shall be subject to the right of the Company and the Guarantor 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 may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter pro-

vided in this Article 18), 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 Company 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, except as such exercise may expressly be limited herein. 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, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, 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.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company, subject to the provisions of the last paragraph of Article 3 hereof, shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a

judgment therefor against the Company, subject to the provisions of the last paragraph of Article 3 hereof, and the Guarantor. 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 Company or, if the Guarantor shall be entitled thereto pursuant to the last paragraph of Article 6 hereof, the Guarantor.

The Company, subject to the provisions of the last paragraph of Article 3 hereof, 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, subject to the provisions of the last paragraph of Article 3 hereof, may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take pos-

session of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company and the Guarantor will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited with the Interstate Commerce Commission and otherwise as may be 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 Company and the Guarantor will promptly furnish to the Vendor evidences of such filing, recording or deposit, and an opinion or opinions of counsel with respect thereto, satisfactory to the Vendor. This Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance of any unit of the Equipment.

ARTICLE 22. *Payment of Expenses.* The Company will pay all reasonable costs and expenses (other than the fees

and expenses of counsel for the Manufacturer and the Guarantor) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), or any instrument supplemental hereto or thereto, including all fees and expenses of special counsel for the first assignee of this Agreement and of special counsel for the Investor referred to in the Assignments, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purpose of this Article 22, if the first assignee is an agent, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Company, at 130 John Street, New York, N. Y. 10038, attention of Corporate Trust Department,

(b) to the Guarantor, at 114 West Eleventh Street, Kansas City, Missouri 64105, attention of the Executive Vice President,

(c) to the Manufacturer, at La Grange, Illinois 60625,

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, and to the Guarantor, 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 Company represents and warrants that its chief place of business is in the State of New York.

ARTICLE 24. *Immunities; Satisfaction of Undertakings.*

No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Assignee, or the Manufacturer, or against Chemical Bank or any other beneficiary of the trust of which the Company is acting as trustee, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or beneficiaries being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Company under Articles 7, 8, 9, 10, 11, 13, 14 and 21 hereunder shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 4, 5, 7, 8, 11 and 16 of the Lease. The Guarantor shall be liable in respect of its guaranty hereunder for such obligations under said Articles whether or not the Lease provides for the discharge of such obligations or is in effect. The Company shall not have any responsibility for the Lessee's failure to perform such undertakings, but if the same shall not be performed they may constitute the basis for an event of default hereunder pursuant to Article 17.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Company, while in form purporting to be the representations, covenants, undertakings and agreements of Company are nevertheless each and every one of them, made and intended not as personal representations, covenants, undertakings and agreements by the Company or for the purpose or with the intention of binding the Company personally but are made and intended for the purpose of binding only

the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the Company not in its own right but solely in the exercise of the powers expressly conferred upon it as such Company; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Company, or any beneficiary of the trust under which the Company is acting on account of this Agreement or on account of any representation, covenant, undertaking or agreement of the Company or any beneficiary under the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; *provided, however*, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to the Trust Estate for satisfaction of the same.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the annexes relating hereto, exclusively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof 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 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Motors Corporation (Electro-Motive Division) 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 or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Manufacturer", whenever used in this Agreement, means, both before and after any such assignment, General Motors Corporation (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of March 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by *L. D. Seannell*
Vice President

W

[CORPORATE SEAL.]

Attest:

W. A. Yunker
Assistant Secretary

UNITED STATES TRUST COMPANY
OF NEW YORK, as Trustee under
a Trust Agreement dated as of
March 1, 1971.

by *Malcolm D. Jones*
Assistant Vice President

[CORPORATE SEAL.]

Attest:

J. G. ...
Assistant Secretary

THE KANSAS CITY SOUTHERN
RAILWAY COMPANY,

by *L. O. Smith*
Executive Vice President

[CORPORATE SEAL.]

Attest:

Robert E. ...
Assistant Secretary

STATE OF NEW YORK, }
 COUNTY OF NEW YORK, } ss.:

On this 9th day of March, 1971, before me personally appeared **MALCOLM J. HOOD**, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of UNITED STATES TRUST COMPANY OF NEW YORK, 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 By-laws, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Irene R. Scocca

Notary Public
IRENE R. SCOCCA
 Notary Public, State of New York
 No. 40000010
 Qualified in Queens County
 Certificate filed in New York County
 Commission Expires March 30, 1972

[NOTARIAL SEAL]

STATE OF ILLINOIS }
 COUNTY OF COOK } ss.:

On this 11th day of March, 1971, before me personally appeared B. B. BROWNELL, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. H. [Signature]

Notary Public

[NOTARIAL SEAL]

My commission expires October 28, 1971

ANNEX B

Type	Manufacturer's Specifications	Manufacturer's Plant	Quantity	Lessee's Road Numbers (both inclusive)	Unit Base Price*	Total Base Price**	Time and Place of Delivery
1500 H.P. Model SW-1500 Switching Locomotives	Spec. No. 8036 dated March 5, 1970, as amended by Spec. No. 8036-2 dated May 1, 1970 and Spec. Supplement dated July 20, 1970	McCook, Illinois	6	1518-1523	\$179,456	\$2,580,000	Prior to May 15, 1971, at Bloomburg, Texas
			8	1524-1531	184,262		
3000 H.P. Model SD-40 Diesel Locomotives	Spec. No. 8054 dated June 2, 1969, as amended by Spec. No. 8054-3 dated July 1, 1968 and Spec. Supplement dated July 20, 1970	McCook, Illinois	4	628-631	292,644	\$2,520,000	Prior to May 15, 1971, at Bloomburg, Texas
			2	632-633	324,594		
			2	634-635	323,104		

*F. O. B. McCook, Illinois, exclusive of freight charges.

**Including estimated freight charges.

ANNEX C

LEASE OF RAILROAD EQUIPMENT

by and between

**UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee,**

and

**THE KANSAS CITY SOUTHERN RAILWAY
COMPANY**

Dated as of March 1, 1971

terms and conditions, but, upon default of the Lessee hereunder or under the Conditional Sale Agreement, subject to all the rights and remedies of the Vendor thereunder:

§ 1. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be tendered to the Lessee at the point or points within the United States of America at which such Unit is delivered to the Lessor under the Conditional Sale Agreement. Upon such tender, the Lessee will cause an authorized representative of the Lessee to inspect the same, and if such Unit is found to be in good order, to accept delivery of such Unit and execute and deliver to the Lessor and to the Manufacturer a certificate of acceptance and delivery (hereinafter called the Certificate of Delivery), whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 2. *Rentals.* The Lessee agrees to pay to the Lessor as rental for each Unit subject to this Lease 31 consecutive semiannual payments, payable on the business day next preceding May 15 and November 15 in each year commencing with the business day next preceding May 15, 1971. The first such semiannual payment shall be in an amount equal to 0.0213195% of the Purchase Price (as such term is defined in the Conditional Sale Agreement) of each Unit subject to this Lease for each day elapsed from and including the date such Unit is settled for under the Conditional Sale Agreement to May 15, 1971; the next ten semiannual payments shall each be in an amount equal to 3.837500% of the Purchase Price of each such Unit; and the last 20 such semiannual payments shall each be in an amount equal to 6.422367% of the Purchase Price of each such Unit.

The Lessor irrevocably instructs the Lessee, (i) to make such of the payments provided for in this Lease (including

but not limited to the payments required under § 6 hereof) as will satisfy the obligations of the Lessor to the Vendor under the Conditional Sale Agreement accrued at the time such payments are due hereunder, for the account of the Lessor, care of Mellon National Bank and Trust Company, Mellon Square, Pittsburgh, Pennsylvania 15230, attention of Corporate Trust Department, and with power to Mellon National Bank and Trust Company to apply such payments first to Conditional Sale Indebtedness and thereafter to other obligations to the Vendor under the Conditional Sale Agreements and (ii) to pay any balance of the payments provided for in this Lease after deduction of the amount payable pursuant to the foregoing clause (i) to the Lessor directly at its offices at 130 John Street, New York, New York 10038, attention of Corporate Trust Department, or at such other address as the Lessor may specify for such purpose. The provisions of this paragraph relating to payments to satisfy the obligations of the Lessor are made for the benefit of the Vendor under the Conditional Sale Agreement and certain persons who have beneficial interests in the Conditional Sale Agreement and shall not, until such time as such obligations are satisfied, be modified without the consent of the Vendor and any persons holding such beneficial interests.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent, including but not limited to, abatements, reductions or setoffs due or alleged to be due to, or by reason of, any past, present or future claims of the Lessee against the Lessor under this Lease or the Manufacturer or the Vendor or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or damage to, or loss of possession or loss of use of, or destruction of, all or any of the Units

with the Vendor and the Lessor by the Lessee and filed, recorded or deposited in all public offices where the Conditional Sale Agreement and this Lease shall have been filed, recorded or deposited.

Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Units as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Units to be lettered "Kansas City Southern," "KCS" or with the name of any affiliate of the Lessee or to bear other names, initials or insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 5. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state or federal, Canadian (Dominion or Provincial) or Mexican taxes (other than any federal, Canadian [Dominion or Provincial] or Mexican income tax [to the extent that the Lessor receives credit therefor against its United States federal income tax liability] payable by the Lessor in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided), assessments or license fees and any charges, fines or penalties in connection therewith (hereinafter called im-

positions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however*, that the Lessee shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of invoice therefor.

In the event that the Lessor shall become obligated to make any payment to the Manufacturer or the Vendor or otherwise pursuant to Article 10 of the Conditional Sale Agreement not covered by the foregoing paragraph of this § 5, the Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 10.

In the event any reports with respect to impositions are required to be made on the basis of individual Units, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Vendor in such

Units or notify the Lessor and the Vendor of such requirement and make such reports in such manner as shall be satisfactory to the Lessor and the Vendor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any impositions, pursuant to this § 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

As used in this § 5 and in §§ 9 and 15 of this Lease, the term "Lessor" includes Chemical Bank or any other beneficiary of the trust for which the Lessor is acting as trustee.

§ 6. *Payment for Casualty Occurrences.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences) during the term of this Lease or any extended term thereof, the Lessee shall, within ten days after it shall have been determined that such Unit has suffered a Casualty Occurrence, fully notify the Lessor and the Vendor with respect thereto. On the rental payment date next succeeding such notice (or in the event such rental payment date shall occur within five days after such notice, on the following rental payment date) the Lessee shall pay to the Lessor an amount equal to the accrued rental for such Unit to the date of such payment plus a sum equal to the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with the schedule set out below. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue as of the date of such payment, the term of this Lease as to such Unit shall terminate and the Lessor shall be entitled to recover possession of such Unit.

The Casualty Value of each Unit as of any rental payment date shall be that percentage of the Purchase Price of such Unit as is set forth in the following schedule opposite the number of such rental payment date:

Payment No.	Percentage	Payment No.	Percentage
1	105.468%	16	75.265%
2	105.468	17	70.668
3	105.468	18	65.966
4	105.468	19	61.154
5	105.237	20	56.230
6	104.704	21	51.190
7	103.994	22	46.030
8	103.105	23	40.748
9	102.035	24	35.339
10	100.779	25	29.800
11	96.759	26	24.126
12	92.650	27	18.313
13	88.448	28	12.358
14	84.152	29	6.255
15	79.759	30	0.0

Except as hereinabove in this § 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

§ 7. *Annual Reports.* On or before April 15, in each year, commencing with the year 1972, the Lessee will cause to be furnished to the Lessor and the Vendor, in such number of counterparts as the Lessor or Vendor may request, an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units

then leased hereunder and covered by the Conditional Sale Agreement, the amount, description and numbers of all Units that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or the Vendor may reasonably request, and (b) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the markings required by § 4 hereof and Article 9 of the Conditional Sale Agreement shall have been preserved or replaced. The Lessor shall have the right at its sole cost, risk and expense, by its authorized representatives, to inspect the Units and the Lessee's records with respect thereto, at such times as shall reasonably be necessary to confirm to the Lessor the existence and proper maintenance of the Units during the continuance of this Lease.

§8. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; and Indemnification.* **The Lessor makes no warranty or representation, either express or implied, as to the design or condition of, or as to the quality of the material, equipment or workmanship in, the Units delivered to the Lessee hereunder, and the Lessor makes no warranty of merchantability or fitness of the Units for any particular purpose or as to title to the Units or any component thereof,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; but the Lessor hereby irrevocably appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have, as vendee, under the provisions

of Articles 14 and 15 and Annex A of the Conditional Sale Agreement. The Lessee's acceptance of delivery of the Units shall be conclusive evidence as between the Lessee and the Lessor that all Units described in the Certificate of Delivery are in all the foregoing respects satisfactory to the Lessee and the Lessee will not assert any claim of any nature whatsoever against the Lessor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Vendor, to comply in all respects with all laws of the jurisdictions in which the Units may be operated, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units to the extent such laws and rules affect the operation or use of the Units. In the event that such laws or rules require the alteration of the Units or in case any equipment or appliance on any such Unit shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit in order to comply with such laws, regulations, requirements and rules, the Lessee agrees to make such alterations, changes, additions and replacements at its own expense; and the Lessee agrees at its own expense to use, maintain and operate such Unit in full compliance with such laws, regulations, requirements and rules so long as it is subject to this Lease; *provided, however*, that the Lessee 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 Lessor or the Vendor, adversely affect the property or rights of the Lessor or the Vendor hereunder or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit which is subject to this Lease in good order and repair.

Any and all additions to any Unit and any and all parts installed on or replacements made to any Unit shall be considered accessions to such Unit and, at the cost and expense of the Lessee, full ownership thereof free of any lien, charge, security interest or encumbrance (except for those created by the Conditional Sale Agreement) shall immediately be vested in the Lessor and the Vendor as their respective interests appear in the Unit itself.

The Lessee agrees to indemnify and save harmless the Lessor and the Vendor against any charge or claim made against the Lessor or the Vendor, and against any expense, loss or liability (including but not limited to counsel fees and expenses, patent liabilities, penalties and interest) which the Lessor or the Vendor may incur in any manner by reason of entering into or the performance of the Conditional Sale Agreement or this Lease or by reason of the ownership of any Unit, or which may arise in any manner out of, or as the result of, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit under this Lease, except as otherwise provided in Articles 15 and 22 of the Conditional Sale Agreement and § 16 of this Lease. The Lessee further agrees to indemnify and save harmless the Lessor and the Vendor against any charge, claim, expense, loss or liability on account of any accident in connection with the operation, use, condition, possession or storage of any Unit resulting in damage to property or injury or death to any person. The indemnities arising under this paragraph shall survive payment of all other obligations under this Lease or the termination of this Lease.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing

(or, to the extent permissible, file on behalf of the Lessor) any and all reports to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Vendor of the Units or the leasing thereof to the Lessee.

§ 9. *Default.* If, during the continuance of this Lease, one or more of the following events (hereinafter sometimes called Events of Default) shall occur:

A. default shall be made in the payment of any part of the rental provided in § 2 hereof and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein or in the Conditional Sale Agreement and such default shall continue for 30 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

D. any proceedings shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of the Lessee hereunder or under the Conditional Sale Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease and under the Conditional Sale 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 Lessee or for the property of the Lessee 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 proceeding shall have been commenced, whichever shall be earlier; or

E. a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may hereafter be amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Conditional Sale Agreement and this Lease 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;

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

(a) proceed by appropriate court action or actions, either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof; or

(b) by notice in writing to the Lessee terminate this Lease, whereupon all rights of the Lessee to the use of the Units shall absolutely cease and determine as though this Lease had never been made, but the Lessee shall remain liable as hereinafter provided; and thereupon

the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any of the Units and thenceforth hold, possess and enjoy the same free from any right of the Lessee, its successors or assigns, to use the Units for any purposes whatever; but the Lessor shall, nevertheless, have a right to recover from the Lessee any and all amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is the total number of days in such full rental period) and also to recover forthwith from the Lessee (i) as damages for loss of the bargain and not as a penalty, a sum, with respect to each Unit, which represents the excess of (x) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (y) the then present value of the rentals which the Lessor, within a reasonable time (but not less than 45 days) after the date of such termination, reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on a basis of a 6% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, (ii) any damages and expenses, including reasonable attorneys' fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental, and (iii) an

amount which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof, calculated on the assumption that the Lessor's Federal, state and local taxes computed by reference to net income or excess profits are based on (a) the highest incremental Federal income tax and excess profits tax rate generally applicable in the appropriate tax year or years to domestic corporations, including therein the effect of any applicable surtax, surcharge and/or any other Federal tax or charge related to net income or excess profits, or related to any tax on net income or excess profits (hereinafter called the "Federal Tax Rate") and (b) the sum of the highest incremental generally applicable rates of tax imposed by New York State and New York City in the appropriate tax year or years on net income and/or excess profits of corporations organized under the laws of New York State and doing business within New York City, including therein the effect of any applicable surtax, surcharge and/or other New York State and/or New York City tax or charge related to net income or excess profits or related to any tax on net income or excess profits; and deducting from any such Federal tax the amount of any such state and local tax multiplied by the Federal Tax Rate (such rates as so calculated being hereinafter in this Agreement called the Assumed Rates), shall be equal to such sum as, in the reasonable opinion of the Lessor, will cause the Lessor's net return (taxes being calculated at the Assumed Rates for the appropriate tax year or years) under this Lease to be equal to the net return (taxes being calculated at the Assumed Rates for the appropriate tax year or years) that would have been available to the Lessor if it had been entitled to utilization of all or such portion of the Rapid Amortization Deduction (as hereinafter defined) which was lost, not claimed, not available for claim, disallowed or recaptured in respect of a Unit as a result of the termi-

nation of this Lease, the Lessee's loss of the right to use such Unit, any action or inaction by the Lessor or the sale or other disposition of the Lessor's interest in such Unit after the occurrence of an Event of Default.

The term "appropriate tax year or years" as used in this § 9 or § 15 of this Lease with respect to the Assumed Rates shall refer to the tax year or years to which is allocable any taxable income of the Lessor arising from (i) the receipt by the Lessor of any amount referred to in such sections or (ii) the loss, the failure to claim, the inability to claim, or the disallowance or recapture of any Rapid Amortization Deduction as provided in such sections.

Anything in this § 9 to the contrary notwithstanding, any default in the observance or performance of any covenant, condition or agreement on the part of the Lessee which results solely in the loss by the Lessor of, or the loss by the Lessor of the right to claim, or the disallowance with respect to the Lessor of, or the recapture of, all or any portion of the amortization deduction with respect to a Unit provided for in Section 184 of the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Rapid Amortization Deduction), available to non-railroad lessors of railroad equipment shall be for all purposes of this Lease deemed to be cured if the Lessee shall, on or before the next rental payment date after written notice from the Lessor of the loss, or the loss of the right to claim, or the disallowance of or the recapture of the Rapid Amortization Deduction in respect of such Unit, agree to pay to the Lessor the revised rental rate in respect of such Unit determined as provided in the fourth paragraph of § 15 hereof.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies

herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

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

§ 10. *Return of Units Upon Default.* If this Lease shall terminate pursuant to § 9 hereof, the Lessee shall forthwith deliver possession of the Units to the Lessor. For the purpose of delivering possession of any Unit or Units to the Lessor as above required, the Lessee shall at its own cost, expense and risk:

A. forthwith place such Units upon such storage tracks of the Lessee as the Lessor reasonably may designate,

B. permit the Lessor to store such Units on such tracks at the risk of the Lessee until such Units have been sold, leased or otherwise disposed of by the Lessor, and

C. transport the same to any place on the lines of railroad operated by it or any of its affiliates or to any connecting carrier for shipment, all as directed by the Lessor.

The assembling, delivery, storage and transporting of the Units as hereinbefore provided shall be at the expense and risk of the Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and

transport the Units. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence.

Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 10, the Lessee hereby irrevocably appoints the Lessor as the agent and attorney of the Lessee, with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time.

§ 11. *Assignment; Possession and Use.* Subject to the obligations of the Lessor to the Vendor under the Conditional Sale Agreement as set forth in the second paragraph of § 2, this Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder (including, but not limited to, the rights under §§ 2, 5, 6, 9 and 15) shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall apply and refer to each such assignee of the Lessor.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement in the capacity as guarantor or otherwise the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease and the Conditional Sale Agreement, but, without the prior written consent of the Lessor,

the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them. In addition, the Lessee, at its own expense will promptly cause to be duly discharged any lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Vendor not related to the ownership of the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of the Lessor, the Vendor or the Lessee therein. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by the provisions of the immediately succeeding paragraph hereof.

So long as the Lessee shall not be in default under this Lease or under the Conditional Sale Agreement in its capacity as guarantor or otherwise, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it or any affiliate upon lines of railroad owned or operated by it or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, and also to permit the use of the Units upon connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease, including the last paragraph of this § 11, and the Conditional Sale Agreement. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

Nothing in this § 11 shall be deemed to restrict the right of the Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any railroad corporation incorporated under the laws of any state of the United States of America or the District of Columbia (which shall have duly assumed the obligations

of the Lessee hereunder and under the Conditional Sale Agreement) into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

The Lessee agrees that during the term of this Lease, it will not assign any Unit to service involving the regular operation and maintenance thereof outside the United States of America.

§ 12. *Purchase Option.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease in respect of such Units, elect to purchase all, but not fewer than all, such Units covered by this Lease at the end of such term of this Lease for a purchase price equal to the "Fair Market Value" of such Units as of the end of such term.

Fair Market Value shall be determined on the basis of, and shall be equal in amount to, the value which would obtain in an arm's-length transaction between an informed and willing buyer-user (other than (i) a lessee currently in possession and (ii) a used equipment dealer) and an informed and willing seller under no compulsion to sell and, in such determination, costs of removal from the location of current use shall not be a deduction from such value. If on or before four months prior to the expiration of the term of this Lease, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Value of the Units, such value shall be determined in accordance with the foregoing definition by a qualified independent Appraiser. The term Appraiser shall mean such independent appraiser as the Lessor and the Lessee may mutually agree upon, or failing such agreement, a panel of three independent appraisers, one of whom shall be selected by the Lessor, the second by the Lessee and the third designated by the first two so selected. The Appraiser shall be instructed to make

such determination within a period of 30 days following appointment, and shall promptly communicate such determination in writing to the Lessor and the Lessee. The determination so made shall be conclusively binding upon both Lessor and Lessee. The expenses and fee of the Appraiser shall be borne by the Lessee.

§ 13. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is sold to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee as the Lessee may designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The assembling, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to assemble, deliver, store and transport the Units. If Lessor shall elect

to abandon any Unit which has suffered a Casualty Occurrence or which after the expiration of this Lease the Lessor shall have deemed to have suffered a Casualty Occurrence, it may deliver written notice to such effect to the Lessee and the Lessee shall thereupon assume and hold the Lessor harmless from all liability arising in respect of any responsibility of ownership thereof, from and after receipt of such notice. The Lessor shall execute and deliver to the Lessee a bill of sale or bills of sale transferring to the Lessee, or upon its order, the Lessor's title to and property in any Unit abandoned by it pursuant to the immediately preceding sentence. The Lessee shall have no liability to the Lessor in respect of any Unit abandoned by the Lessor after termination of the Lease; *provided, however*, that the foregoing clause shall not in any way relieve the Lessee of its obligations pursuant to § 6 hereof to make payments equal to the Casualty Value of any Unit experiencing a Casualty Occurrence during the original or any extended term of this Lease.

§ 14. *Opinion of Counsel.* On each Closing Date (as defined in the Conditional Sale Agreement), the Lessee will deliver to the Lessor two counterparts of the written opinion of counsel for the Lessee, addressed to the Lessor and the Vendor, in scope and substance satisfactory to the Lessor, the Vendor and their respective counsel, to the effect that:

A. the Lessee is a corporation legally incorporated, validly existing and in good standing under the laws of the State of Missouri, with adequate corporate power to enter into the Conditional Sale Agreement and this Lease;

B. the Conditional Sale Agreement and this Lease have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their terms;

C. the Conditional Sale Agreement and the first assignment thereof by the Manufacturer and this Lease

have been duly filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act and such filing and recordation will protect the Vendor's and the Lessor's interests in and to the Units and no filing, recording or deposit (or giving of notice) with any other federal, state or local government is necessary in order to protect the interests of the Vendor or the Lessor in and to the Units;

D. no approval is required from any public regulatory body with respect to the entering into or performance of the Conditional Sale Agreement or this Lease;

E. the entering into and performance of the Conditional Sale Agreement or this Lease will not result in any breach of, or constitute a default under, any indenture, mortgage, deed of trust, bank loan or credit agreement or other agreement or instrument to which the Lessee is a party or by which it may be bound; and

F. no mortgage, deed of trust, or other lien of any nature whatsoever which now covers or affects, or which may hereafter cover or affect, any property or interests therein of the Lessee, now attaches or hereafter will attach to the Units or in any manner affects or will affect adversely the Vendor's or Lessor's right, title and interest therein; *provided, however*, that such liens may attach to the rights of the Lessee hereunder in and to the Units.

§ 15. *Federal Income Taxes.* The Lessor, as the owner of the Units, shall be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (hereinafter called the Code), to an owner of property, including (without limitation) an allowance for the Rapid Amortization Deduction (as defined in § 9 of this Lease), with respect to the Units; *provided, however*, that the Lessor hereby elects to treat the Lessee as having acquired the Units for pur-

poses of the investment credit provided by Section 38 of the Code and, in connection therewith, the Lessor shall, upon Lessee's request and at Lessee's expense, execute such instruments, and shall take such other action, of the character described in Section 1.48-4 of the Income Tax Regulations, as amended, or corresponding provisions of any successor regulations, as shall be reasonably necessary in Lessee's judgment to insure entitlement of Lessee to any credit allowable under said Section 38 with respect to the Units.

Lessee agrees that neither it nor any corporation controlled by it, in control of it, or under common control with it, directly or indirectly, will at any time take any action or file any returns or other documents inconsistent with the foregoing and that each of such corporations will file such returns, take such action and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying by Lessor such records as will enable Lessor to determine whether it is entitled to the full benefit of the Rapid Amortization Deduction with respect to the Units.

The Lessee represents, agrees and warrants that (i) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code and at all times thereafter during the term of this Lease, the Units will be "rolling stock of the type used by a common carrier engaged in the furnishing or sale of transportation by railroad and subject to the jurisdiction of the Interstate Commerce Commission" within the meaning of section 184(d) of the Code, (ii) at the time the Lessor becomes the owner of the Units for purposes of section 184 of the Code the Units will not have been used by any person so as to preclude "the original use of such rolling stock" within the meaning of section 184 of the Code from commencing with the Lessor and no

investment credit, depreciation or other tax benefits will have been claimed by any person with respect thereto, (iii) the Lessee is as of the date hereof and will be at all times during the term of this Lease "a domestic common carrier by railroad" within the meaning of section 184(d)(1)(A) of the Code, and (iv) during the term of this Lease, each Unit will, within the meaning of section 184(d)(1)(A) of the Code, solely be "used by a domestic common carrier by railroad on a full-time basis, or on a part-time basis if its only additional use is an incidental use by a Canadian or Mexican common carrier by railroad on a per diem basis."

If the Lessor shall lose, or shall not have or shall lose the right to claim, or there shall be disallowed with respect to the Lessor, or the Lessor shall be required to recapture, all or any portion of the Rapid Amortization Deduction with respect to any Unit as a result of any of the following events:

(a) Any representation, warranty, fact, estimate, opinion or other statement made or stated by the Lessee (or any officer, employee or agent thereof) contained herein, in the Conditional Sale Agreement, in the Assignment (as defined in the Conditional Sale Agreements), in the Finance Agreement (as defined in the Assignment), or otherwise made in writing in connection herewith or therewith, shall, in the opinion of Counsel, be fraudulent, untrue, incorrect, inaccurate or misleading in whole or in part; or the Lessee (or any officer, employee or agent thereof) shall, in the opinion of Counsel, fail to state any material fact in connection with the transactions contemplated hereby or thereby; or the Lessee shall take any action in respect of its income tax returns or otherwise which, in the opinion of Counsel, shall be inconsistent with, or in contravention of, any of the transactions contemplated hereby or thereby; or the Lessee (or any officer, employee or agent thereof), in the opinion of Counsel, shall take any other

action whatsoever which shall cause the loss or disallowance or recapture of any portion of the full Rapid Amortization Deduction; or

(b) The failure of the Lessee to perform or observe any covenant, condition or agreement to be performed or observed by it under this Lease or the Conditional Sale Agreement, the Assignment or the Finance Agreement; or

(c) Any use of such Unit which prevents such Unit from being "qualified railroad rolling stock" within the meaning of section 184(d) of the Code, or any regulations promulgated thereunder;

the rental rate applicable to such Unit set forth in § 2 of this Lease shall, on and after the next succeeding rental payment date after written notice to the Lessee by the Lessor that such Rapid Amortization Deduction has not been claimed, or if claimed and then disallowed or recaptured on and after the next succeeding rental date after payment of the tax attributable thereto, be increased by such amount for such Unit which, after deduction of all taxes required to be paid by the Lessor in respect of the receipt thereof under the laws of the United States of America or any political subdivision thereof (calculated at the Assumed Rates for the appropriate tax year or years as defined in § 9 hereof), in the reasonable opinion of the Lessor, will cause the Lessor's net return over the original term of the Lease (taxes being calculated at the Assumed Rates for the appropriate tax year or years) in respect of such Unit under this Lease to equal the net return (taxes being calculated at the Assumed Rates for the appropriate tax year or years) that would have been available if the Lessor had been entitled to utilization of all or such portion of the Rapid Amortization Deduction which was not claimed or was disallowed or was recaptured and the Lessee shall forthwith pay to the Lessor the amount of any interest

which may be assessed by the United States against the Lessor attributable to the loss or recapture of all or any portion of the Rapid Amortization Deduction. The Lessor agrees that if, in the opinion of Messrs. Cravath, Swaine & Moore or other independent counsel selected by the Lessor and acceptable to the Lessee (herein referred to as Counsel), a bona fide claim to all or a portion of the Rapid Amortization Deduction on any Unit exists in respect of which the Lessee is required to pay increased rental and interest as aforesaid to the Lessor as above provided, the Lessor shall, upon request and at the expense of the Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to sustain such claim. The Lessor may take such action prior to making payment of the amounts claimed pursuant to a notice of disallowance or may make such payment and then sue for a refund. In the latter event, if the final determination shall be adverse to the Lessor, the Lessee shall pay to Lessor interest on the amount of the tax paid attributable to the Rapid Amortization Deduction disallowed, computed at the rate of 9% per annum from the date of payment of such tax to the date the Lessee shall reimburse the Lessor for such tax in accordance with the provisions of this § 15. The Lessor shall not be obligated to take any such legal or other appropriate action unless the Lessee shall first have indemnified the Lessor for all liabilities and expenses which may be entailed therein and shall have furnished the Lessor with such reasonable security therefor as may be requested.

The Lessee's agreement to pay any sums which may become payable pursuant to this § 15 shall survive the expiration or other termination of this Lease.

On or before the first Closing Date occurring under the Conditional Sale Agreement, the Lessor, as a condition to its obligation to lease the Units to the Lessee hereunder, shall have received counterparts of the written opinion of Messrs. Cravath, Swaine & Moore addressed to the Lessor

to the effect that for federal income tax purposes and upon such review and on the basis of such understandings as such counsel deem necessary:

A. the Lessor will be considered the owner of the Units; and

B. the Lessor will be entitled to either (i) depreciation deductions with respect to the Units, computed in accordance with any of the methods listed in Section 167(b) of the Internal Revenue Code of 1954, as amended to the date hereof, or (ii) amortization of the Units (provided that such Units retain their status as "qualified railroad rolling stock" within the meaning of the Internal Revenue Code of 1954, as amended to the date hereof), as provided for in said Section 184, whichever the Lessor elects.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, recording and deposit and refiling, re-recording and redeposit required of the Lessor under Article 21 of the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record and deposit (and will refile, re-register, re-record or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Vendor for the purpose of proper protection, to their satisfaction, of the Vendor's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the first assignment thereof by the Manufacturer; and the Lessee will promptly furnish to the Vendor and the Lessor evidences of all such filing, recording or deposit, and an opinion

or opinions of counsel for the Lessee with respect thereto satisfactory to the Vendor and the Lessor. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessor will pay the reasonable costs and expenses involved in the preparation and printing of this Lease. The Lessor and the Lessee will each bear the respective fees and disbursements, if any, of their respective counsel.

§ 17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay also an amount equal to 9% per annum of the overdue rentals for the period of time during which they are overdue.

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

if to the Lessor, at 130 John Street, New York, New York 10038, attention of Corporate Trust Department;

if to the Lessee, at 114 West Eleventh Street, Kansas City, Missouri 64105, attention of the Executive Vice President;

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

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unen-

forceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

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

§ 20. *Execution.* This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated as of March 1, 1971, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

§ 21. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals

to be hereunto affixed and duly attested, all as of the date first above written.

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee under a Trust
Agreement dated as of March 1, 1971,

by
Assistant Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

THE KANSAS CITY SOUTHERN RAILWAY
COMPANY,

by
Executive Vice President

[CORPORATE SEAL]

Attest:

.....
Assistant Secretary

SCHEDULE A

<u>Type</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (both inclusive)</u>	<u>Unit Base Price*</u>	<u>Total Base Price**</u>	<u>Time and Place of Delivery</u>
1500 H.P. Model SW-1500 Switching Locomotives	6 8	1518-1523 1524-1531	\$179,456 184,262	\$2,580,000	Prior to May 15, 1971 at Bloomburg, Texas
3000 H.P. Model SD-40 Diesel Locomotives	4 2 2	628-631 632-633 634-635	292,644 324,594 323,104	2,520,000	Prior to May 15, 1971 at Bloomburg, Texas

*Exclusive of freight charges.
**Including freight charges.