RECORDATION NO. 8535 Filed & Recorded

OCT 27 1976 11 30 PM

INTERSTATE COMMERCE COMMISSION

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I. C. C.
FEE OPERATION BR.

8535-A

RECORDATION NO. Filed & Recorded

October 26, 1976

8535-C

RECORDATION NO. Filed & Recorded

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8535-B Filed & Recorded

OCT 27 1976 11 30 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 8535-C Filed & Recorded

OCT 27 1976 11 30 PM

INTERSTATE COMMERCE COMMISSION

Date OCT 27
Fee $ 100
ICC Washington, D. C.

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

Dear Sir:

I am sending you herewith for filing in your office, pursuant to Section 20c of the Interstate Commerce Act, six counterparts of each of the following:

(a) Conditional Sale Agreement dated as of October 8, 1976, between General Motors Corporation and J. P. Morgan Interfunding Corp., covering the purchase by J. P. Morgan Interfunding Corp. of 26 new diesel locomotives for use in interstate commerce;

(b) Agreement and Assignment also dated as of October 8, 1976, between General Motors Corporation and Girard Trust Bank, as Agent, pursuant to which General Motors Corporation assigns to Girard Trust Bank the former's interest in the Conditional Sale Agreement and in the locomotives;

(c) Lease of railroad equipment dated as of October 8, 1976, between William M. Gibbons, trustee of the property of the Chicago, Rock Island and Pacific Railroad Company (the "Lessee") and J. P. Morgan Interfunding Corp. pursuant to which the locomotives are leased to the Lessee; and

Art Kopf

counterpart

(d) Lease Assignment also dated as of October 8, 1976, between J. P. Morgan Interfunding Corp. and Girard Trust Bank, as Agent pursuant to which J. P. Morgan Interfunding Corp. assigns to the Agent the former's interest in the Lease.

There is also enclosed a check in the amount of $100 for the recordation fees. The names and addresses of the parties to the transaction are as follows:

Vendor:	General Motors Corporation Electro-Motive Division La Grange, Illinois 60525
Purchaser and Lessor:	J. P. Morgan Interfunding Corp. 37 Wall Street New York, New York 10005
Lessee:	William M. Gibbons, trustee of the property of the Chicago, Rock Island and Pacific Railroad Company 139 West Van Buren Street Chicago, Illinois 60605
Assignee of Conditional Sale Agreement and of Lease:	Girard Trust Bank, as Agent Broad and Chestnut Streets Philadelphia, Pennsylvania 19101

The equipment covered by the agreement consists of 30 - 2000 h.p. multi-purpose diesel locomotives, GP38-2, with A.A.R. mechanical designation B-B, bearing Rock Island road numbers Rock 4326-4351, inclusive, and marked "Girard Trust Bank, Agent, Security Owner".

Kindly return to the bearer four counterparts of each of the documents.

Very truly yours,

James A. Ounsworth

JAO:mr

Enclosures

RECORDATION NO. 8535 Filed & Recorded
OCT 27 1976 1 10 PM
INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of October 8, 1976

between

GENERAL MOTORS CORPORATION

and

J. P. MORGAN INTERFUNDING CORP.

[Covering 26 Diesel-Electric Locomotives]

Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on , 1976 at ., recordation number

CONDITIONAL SALE AGREEMENT dated as of October 8, 1976, between GENERAL MOTORS CORPORATION, a Delaware corporation (hereinafter called the "Vendor" or "Builder" as more particularly set forth in Article 23 hereof), and J. P. Morgan Interfunding Corp., a Delaware corporation, (said corporation hereinafter called the "Vendee").

WHEREAS, the Builder will construct, sell and deliver to the Vendee, and the Vendee will purchase, the railroad equipment described in Annex A hereto (hereinafter called collectively the "Equipment" or "Units" and individually a "Unit");

WHEREAS, the Vendee simultaneously with the execution of this Agreement, will lease the Equipment to William M. Gibbons, trustee of the property of the Chicago, Rock Island and Pacific Railroad Company (the "Debtor") (said trustee in such capacity together with his successors and assigns being hereinafter called the "Lessee") pursuant to a lease of railroad equipment dated as of the date hereof (hereinafter called the "Lease"); and

WHEREAS, the Builder, simultaneously with the execution of this Agreement, will assign certain rights under this Agreement to Girard Trust Bank, as Agent, (hereinafter called the "Agent") for Great American Insurance Company, The Provident Bank and Erie County Savings Bank (such corporations being hereinafter called the "Investors") under a finance agreement dated as of the date hereof (the "Finance Agreement"), in which said Finance Agreement the Investors are further defined as the Senior Investors, which consist of The Provident Bank and Great American Insurance Company, and the Junior Investor, which consists of Erie County Savings Bank;

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.* The Builder shall construct the Equipment and will sell and deliver certain Units of the Equipment to the Vendee as specified herein, and the Vendee will purchase the Units and will accept delivery of and pay for the Units as hereinafter provided. Each Unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications").

ARTICLE 1a. *Obligations of Vendee Limited.* Notwithstanding any provision to the contrary contained in this Agreement, the Vendee shall have no personal liability to the Builder, the Agent, their successors or assigns or any other person for any of its obligations, covenants or agreements hereunder except for its obligation to provide funds as an equity investment pursuant to Article 4(a) and its obligation to remove encumbrances resulting from claims against the Vendee not related to ownership of the Units or the transactions contemplated by this Agreement and including tax liens arising out of the receipt of "income and proceeds from the Units" as defined in Article 4 herein. It is the intention of the parties that all other obligations of the Vendee hereunder will be satisfied except as provided in the next succeeding paragraph by the execution of

the Lease to the extent that the Lease places obligations on the Lessee which correspond to the obligations of the Vendee hereunder. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute a basis for an event of default hereunder pursuant to Article 15 hereof; provided that an Event of Default is also declared under the Lease.

With respect to obligations of the Vendee hereunder for which the Vendee is not personally liable (whether or not there is a corresponding obligation of the Lessee in the Lease), the Vendee shall remain liable for the performance of such obligations and may be a party to any action brought to enforce such obligations; *provided, however,* under no circumstances with respect to such obligations may the Vendee be required to pay money to any person, to perform any act at its own expense or to respond in damages to any person except out of any "income and proceeds from the Units", as defined in Article 4 herein, to the extent actually received by the Vendee.

The Vendee shall not waive the provisions of the Lease or agree to any amendment thereof without the consent of the Vendor.

ARTICLE 2. *Design and Quality.* The design, quality and component parts of each Unit of the Equipment shall conform, on the date of delivery and acceptance of each Unit, to all Department of Transportation, Interstate Commerce Commission and any other applicable regulatory body requirements and specifications for new equipment and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such Units of the Equipment.

It is understood and agreed that there may be incorporated in each Unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components; *provided, however,* the cost of any such components in any Unit will not be more than 20% of the total cost of material and parts used in constructing each Unit of Equipment.

ARTICLE 3. *Inspection and Delivery.* The Builder will deliver the certain Units of the Equipment to the Vendee at McCook, Illinois, transportation costs, if any, prepaid.

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

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered and accepted by the Lessee on or before December 31, 1976, shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the appropriate party to this Agreement shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom.

During construction, the Units shall be subject to inspection and

approval by the authorized inspectors of the Vendee and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Units in accordance with the standard quality control practice of the Builder. Upon completion of each Unit or of a number of Units of the Equipment, such Unit or Units shall be presented to an inspector of the Vendee for inspection at the place specified for delivery of such Unit or Units, and if each Unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be a properly authorized employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such Unit or Units have been inspected and accepted on behalf of the Vendee on the date of such Certificate of Acceptance and are marked in accordance with Article 9 hereof; *provided, however,* that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof or its representations and warranties in Article 2 or Article 3 hereof.

On delivery and acceptance of each Unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such Unit; *provided, however,* that the Builder shall not thereby be relieved of its warranties set forth or referred to in Article 13 hereof or its representations and warranties in Article 2 or Article 3 hereof.

ARTICLE 4. *Purchase Price and Payment.* The price or prices per Unit of the Equipment are set forth in Annex A hereto. Such price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the price or prices as so increased or decreased. If on a Closing Date (as hereinafter defined in this Article 4) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement by the Vendee, would, but for the provisions of this sentence, exceed $10,400,000 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agrement such Unit or Units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price to be paid by the Vendee under this Agreement to not more than $10,400,000 (or such higher amounts as aforesaid).

The Equipment shall be settled for two in groups (each herein referred to as a "Group") after delivery to and acceptance by the Vendee unless a greater or lesser number of Groups shall be agreed to by the parties hereto. The term "Closing Date" with respect to each Group shall mean such date (not earlier than August 1, 1976 and not later than December 31, 1976), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for the Units in the Group and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least three business days prior to the Closing Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other

day on which banking institutions in Philadelphia, Pennsylvania, are authorized or obligated to remain closed.

The Vendee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the aggregate Purchase Price of the Units in the Group being delivered, as follows:

(a) On the Closing Date with respect to each Group an amount equal to 22.35% of the aggregate Purchase Price of such Units.

(b) In 59 consecutive quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Units less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The installments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion being herein called the "Conditional Sale Indebtedness") shall be payable on each January 1, April 1, July 1, and October 1, commencing April 1, 1977, to and including October 1, 1991 (or if any such date is not a business day the next succeeding business day), each such date being hereinafter called a "Payment Date." Interim interest on the Conditional Sale Indebtedness shall be due from the Closing Date at a rate of .0295132% of the Conditional Sale Indebtedness per day, with respect to all Groups, and shall be payable on January 1, 1977, to the extent accrued through December 31, 1976. Thereafter, the Conditional Sale Indebtedness shall bear interest at the rate of 10.5% with respect to those amounts advanced by the Senior Investors pursuant to the Finance Agreement and at the rate of 9% with respect to those amounts advanced by the Junior Investors pursuant to the Finance Agreement. The 59 quarterly payments (which payments include the principal and interest from January 1, 1977) shall be equal to the percentage of the Purchase Price set forth in Annex B hereto opposite the quarterly payment dates. Such installments shall completely amortize the Conditional Sale Indebtedness and any interest with respect to such Indebtedness.

The Vendee, agrees to pay to the Agent as an advance interest payment 2.65% of the Purchase Price of the Units in each Group on the Closing Date for such Group, which amount shall be paid to the Senior Investors as required under the Finance Agreement.

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

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

The Vendee will pay interest, to the extent legally enforceable, at the rate of 13% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable.

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 pro-

vided in Article 7 hereof or as a result of the operation of § 13 of the Tax Indemnity Agreement between the Vendee and Lessee dated the date hereof (the "Tax Indemnity Agreement"), the Vendee 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 4) that the Vendee will furnish that portion of the Purchase Price for the Units as is required under subparagraph (a) of the fourth paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to a certain agreement and assignment between the Builder and the Agent dated as of the date hereof (such agreement and assignment being hereinafter called the "Assignment" and such assignee being herein called the "Assignee" or the "Vendor" as indicated in Article 23 hereof).

It is agreed that the obligations of the Vendee to pay to the Vendor any amount required to be paid pursuant to subparagraphs (a) and (b) of this Article 4 with respect to the Units is specifically subject to the fulfillment, on or before the Closing Date, of the following conditions, any of which may be waived by the Vendee:

(1) the Assignee shall concurrently pay or cause to be paid to the Builder the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 4 and Section 6 of the Assignment and the documents required by Section 6(a)(b)(c)(d) and (f) of the Assignment shall have been executed and delivered to the Vendee, dated as of the Closing Date, in form and substance satisfactory to the Vendee;

(2) the Vendee shall have received a certificate executed by the Lessee to the effect that the warranties and representations made by the Lessee under Section 15 of the Lease are true and correct as of the Closing Date to the same effect as if made on such date and that no event which with or without the passage of time or the giving of notice or both would constitute an Event of Default of the Lessee under the Lease or event of default specified herein by reason of an Event of Default of the Lessee under the Lease, shall have occurred and be continuing;

(3) the Vendee shall have received such other documents as the Vendee may reasonably request, including, but not limited to, Certificates of Acceptance and invoices (certified by the Lessee as to the correctness of the price set forth therein) for the Equipment;

(4) the Lease, the Lease Assignment, the Conditional Sale Agreement and the Assignment shall have been duly filed and recorded pursuant to the provisions of Section 20c of the Interstate Commerce Act, prior to the delivery and acceptance hereunder of any Unit of Equipment, and the Vendee shall have been given written evidence satisfactory to it as to such due filing and recordation; and

(5) the Vendee shall have received the following opinions of counsel, addressed to the Vendee dated the Closing Date, and in form and substance satisfactory to the Vendee:

(a) an opinion of counsel for the Builder required by Section 6(g) of the Assignment, and

(b) an opinion of counsel for the Lessee, which shall also be addressed to the Builder, as to the matters described in Section 6(f) of the Assignment and as to the following (and such other matters as the Vendee may reasonably request):

(i) neither the execution and delivery of the Lease, the Purchase Agreement Assignment, or the acknowledgment of the Lease Assignment nor the consummation of the transaction therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof by the Lessee will conflict with, or result in a breach of, any of the terms, conditions or provisions of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Lessee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

(ii) no approval, order or license of the Interstate Commerce Commission is necessary in order for the Vendee to enter into this Conditional Sale Agreement, the Lease or the Lease Assignment or to perform its duties and obligations hereunder or thereunder and the execution and delivery by the Vendee of such agreements and the performance by it of its obligations thereunder and its ownership of the Units of Equipment do not subject the Vendee to the jurisdiction of, or regulation by, the Interstate Commerce Commission, and to the knowledge of such counsel, no approval, order or license of any other governmental authority, federal, state or local, is necessary in order for the Vendee to enter into this Conditional Sale Agreement, the Lease or the Lease Assignment or to perform its duties or obligations hereunder or thereunder, and the execution and delivery by the Vendee of such agreements and the performance by it of its obligations thereunder and its ownership of the Units of Equipment do not subject the Vendee to the jurisdiction of, or regulation by, any regulatory authority, federal, state or local;

(iii) the Lessee has the full power and authority and legal right to carry on its principal business as now conducted;

(iv) with the exception of the appeal of the court order authorizing the Lessee to enter into this lease transaction, there are no actions, suits or proceedings pending or threatened which, if adversely determined against the Lessee, will materially prevent or interfere with his ability or right to perform his duties and obligations under the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment;

(v) such counsel knows of nothing which would make it necessary to register the interest of the Vendee in the Units of Equipment under this Agreement or the Conditional Sale Indebtedness created pursuant to this Agreement under the Securities Act of

1933, as amended, or under any state "Blue Sky" or securities law or regulations; and

(vi) the Lessee has taken no action which would in any manner adversely affect the good and marketable title of the Vendee to each of the Units of Equipment, including, without limitation, taking any action which might create or result in the creation of any liens, encumbrances or claims of any nature whatsoever against the Units of Equipment, except only the rights of the Lessee under the Lease;

(6) the Vendee shall have received evidence satisfactory to the Vendee in the form of a certificate of an independent insurance agent acceptable to the Vendee showing compliance by the Lessee of its obligation relating to insurance pursuant to § 20 of the Lease and an opinion of said insurance agent that the Lessee has complied with said obligation;

(7) the Vendee shall have received a duly executed copy of that certain Agreement of Guaranty dated the date hereof among the Builder, the Vendor and the Vendee (such agreement being hereinafter called the "Guaranty Agreement");

(8) the Vendee shall have received an independent appraisal of the useful life of the Equipment reasonably satisfactory to the Vendee; and

(9) the Vendee shall have received, along with the Agent, documentation from Radnor Associates with respect to activities in connection with the offerings made in this transaction.

(10) the Vendee shall have received an opinion of counsel for the Agent to the effect that (i) the Agent is validly existing and in good standing under the laws of Pennsylvania and (ii) the Lease Assignment has been duly authorized, executed and delivered by the Agent and is enforceable against the Agent in accordance with its terms.

(11) the Vendee shall have received an opinion of Messrs. Pepper, Hamilton & Scheetz with respect to the treatment of the Vendee, for Federal Income Tax purposes, in form and substance satisfactory to the Vendee.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee for all payments to be made by the Vendee under and pursuant to this Agreement with regard to the Units purchased by the Vendee, with the exception only of the payments to be made pursuant to subparagraph (a) of the fourth paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Units" (as herein defined in this Article 4), and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Units" to make such payments when the same is due; *provided, however,* that the failure to make any such payment, such failure continuing for 10 days, shall nonetheless constitute an event of default under Article 15(a) hereof. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee shall have no per-

sonal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Units" to the extent actually received by the Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Units and to the Vendor's rights as assignee of the Lease against the Lessee and the Units. As used herein the term "income and proceeds from the Units" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (x) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Units pursuant to the Lease, (y) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Units 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 (z) any and all other payments received by the Vendee or any assignee of the Vendee under § 10 of the Lease (including any Rental Guaranty Payment as defined in the Guaranty Agreement and the payment required under subparagraph 1(b)(1)(ii) of the Guaranty Agreement), and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (x), (y) and (z) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date such amounts were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Units' shall in no event include amounts referred to in the foregoing clauses (x), (y) and (z) which were received by the Vendee or any assignee of the Vendee prior to a Declaration of Default hereunder and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date on which amounts were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It being further understood that the "income and proceeds from the Units" shall in no event include any amount paid to the Agent by the Builder or its assignees pursuant to Section 1(c) of the Guaranty Agreement. It is further specifically understood and agreed that the failure to make any of the payments under (b) of the fourth paragraph and under (a) of the fourth paragraph

of this article or any other payments hereunder, such failure continuing for 10 days, for the reasons enumerated in this paragraph constitutes an event of default as defined in Article 15(a). It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Units as provided for herein for the full unpaid Purchase Price of the Units and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and shall mark or otherwise indicate full payment of such judgment upon receipt of all amounts payable pursuant to the limitations set forth in this paragraph; *provided,* that the foregoing sentence shall evidence a release of claims solely against the Vendee and not any other entities which may be liable to the Vendor for such claims.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full security title to the Units until the Vendee shall have made all of its payments under this Agreement and shall have kept and performed all of its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Units to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement. (All such security title to the Units being hereinafter called the "Security Title").

Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Units, together with interest and all other payments as herein provided, and all the obligations of the Vendee herein contained shall have been performed, absolute right to the possession of, title to and property in the Units shall pass to and vest in the Vendee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Vendee at that time, will (a) execute a bill or bills of sale for the Units transferring its Security Title therein to the Vendee, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Vendee at its address referred to in Article 20 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Vendee to the Units, and (c) pay to the Vendee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Vendee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate

within a reasonable time after written demand to the Vendor from the Vendee.

ARTICLE 6. *Taxes.* All payments to be made by the Vendee purchasing said Units hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines, and penalties being hereinafter called the "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. The Vendee assumes and agrees to pay all of such Impositions on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Units delivered to and accepted by it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Units free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Units; *provided, however,* that the Vendee shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Units or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however,* that the Vendee shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance and Repair; Casualty Occurrences.* The Vendee agrees that, at its own cost and expense, it will maintain and keep each Unit which it has purchased in good order and repair.

In the event that any such Unit shall be or become lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called the "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such Unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such Unit. Any money paid to the Vendor pursuant to this para-

graph shall be applied to prepay, without premium or penalty, the Conditional Sale Indebtedness and the Vendee will, at its own expense, promptly furnish the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be in substantially the same proportion as the quarterly payments under Article 4 hereof.

Upon payment by the Vendee to the Vendor of the Casualty Value of any Unit which has suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such Unit shall pass to and vest in the Vendee, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Vendee, will execute and deliver to the Vendee a bill of sale and all appropriate instruments confirming such passage to the Vendee of all the Vendor's right, title and interest in such Unit, in recordable form, in order that the Vendee may make clear upon the public records the title of the Vendee to such Unit.

The Casualty Value of each Unit suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price attributable to such Unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest accrued thereon but unpaid as of such date; *provided, however,* that in determining the portion of the original Purchase Price of such Unit, no effect shall be given for any prepayment or prepayments previously made under this Article 7 with respect to any other Casualty Occurrence or Casualty Occurrences. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Units made pursuant to Article 4 hereof shall be deemed to be payment on each Unit purchased by the Vendee in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of the Units.

ARTICLE 8. *Reports and Inspections.* On or before March 31 in each year, but in the case of financial statements as promptly thereafter as possible but not later than April 30 in each such year, commencing with March 31, 1977, the Vendee shall cause to be furnished to the Vendor an accurate statement (a) setting forth as of the preceding December 31 the amount, description and numbers of all Units of the Equipment it has purchased that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Vendor may reasonably request, (b) stating that, in the case of all such Units repaired or repainted during the period covered by such statement, the numbers and markings required by Article 9 hereof have been preserved or replaced and that all matters required to be provided to the Lessor under § 8 of the Lease have been provided. Pursuant to the Lease, the Vendee shall reserve for the Vendor the right, by its agents, to inspect the respective Units and the Lessee's records with respect thereto at such times as the Vendor may request during the term of this Agreement.

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each of the Units to be kept numbered with the identifying number as set

forth in Annex A hereto, or, in the case of Units not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Units, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "Girard Trust Bank, Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's Security Title in the Units and its rights under this Agreement. The Vendee will not permit any such Unit to be placed in operation or exercise any control or dominion over such Unit until such words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any of the Units of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any of the Units as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Vendee may allow the Units to be lettered with the names or initials or other 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 indentification of the rights of the Lessee or its affiliates to use the Units as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will require every lessee or user of the Units to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Units) with all laws of the jurisdictions in which its or such lessee's operations involving the Units may extend, 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 that such laws and rules affect the title, operation or use of the Units; and, in the event that such laws or rules require any alteration of any Unit or in the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however,* that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event

of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Units by the Builder to the Vendee, to the possession of the Units and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Vendee may lease the Units to the Lessee as permitted by, and for use as provided in, the Lease, but the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement; *provided, however,* anything to the contrary herein notwithstanding, that so long as the Lessee shall not be in default under the Lease, the Lessee or its permitted assigns under § 12 of the Lease shall be entitled to the possession and use of the Units. The Vendee hereby agrees, that it will not exercise any of the remedies permitted in the case of an Event of Default under and as defined in the Lease until the Vendor shall have received notice in writing of its intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summons, writs, processes and other documents served by it upon the Lessee or served by the Lessee upon it in connection therewith.

So long as an event of default specified in Article 15 hereof with respect to the Vendee, shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of its Units, and said Units may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Debtor (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 Units may be used upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee, but only upon and subject to all the terms and conditions of this Agreement; *provided, however,* that the Vendee (a) shall not assign or permit the assignment of any of the Units to service involving the regular operation and maintenance thereof outside the United States of America and (b) shall not at any time permit more than 30% of the Units to be located outside the United States of America. The Vendee may also lease the Units to any other railroad company with the prior written consent of the Vendor; *provided, however,* that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement; (ii) such lessee shall expressly agree not to assign or permit the assignment of any Unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America or permit more than 30% of the Units subject thereto to be located outside of the United States of America; and (iii) a copy of such lease shall be furnished to the Vendor.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to its Units, or any part thereof, or the interest of the Vendor therein,

equal or superior to the Vendor's Security Title, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the Security Title of the Vendor in or to the Units or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Units shall be secured by and under this Agreement.

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

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Agreement, the retention by the Vendor of Security Title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Units, any accident in connection with the operation, use, condition, possession, storage or return of any of the Units resulting in damage to property or injury or death to any person during the period when Security Title thereto remains in the Vendor, or the transfer of Security Title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Units, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

The Vendee will bear the responsibility for and risk of and shall, subject to the provisions of Article 7 hereof, not be released from its obligations hereunder in the event of any damage to or the destruction or loss of the Units.

Builder warrants to the Vendee and Lessee that each Unit of the Equipment is of the kind and quality prescribed in the Specifications and is suitable for the ordinary purposes for which such equipment is used.

Builder further warrants to the Vendee and Lessee that each Unit of the Equipment shall be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery or before each Unit of Equipment has been operated 250,000 miles whichever event shall first occur. Builder agrees to correct any such defects, which examination shall disclose to Builder's reasonable satisfaction to exist, by repair or replacement F.O.B. factory and such

correction shall constitute fulfillment of Builder's obligation with respect to such defect under this warranty.

Builder warrants to the Vendee and Lessee specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to Builder.

THERE ARE NO WARRANTIES, EXPRESSED OR IMPLIED, MADE BY BUILDER EXCEPT THE WARRANTIES SET OUT IN THIS AGREEMENT.

The Builder agrees that on the Closing Date it will warrant to the Vendee that at the time of delivery of each Unit of the Equipment purchased in a particular Group hereunder the Builder had at such time legal title to such Unit and good and lawful right to sell such Unit and that title to such Unit was at such time free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee hereunder and the rights of the Lessee under the Lease and that no Unit will have been delivered to or used by the Lessee or any other person unless it shall have been first duly subjected to this Agreement and the Lease, and the Builder further agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such Unit by the Builder hereunder; *all subject, however,* to the other provisions hereof and the rights of the Vendee and the Lessee hereunder. The Builder will not deliver any of the Units to the Vendee hereunder until this Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from counsel for the Assignee or from counsel for the Lessee that such filing and recordation have occurred).

The Builder shall defend any suit or proceeding brought against the Vendee or the Lessee so far as based on a claim that the Units, insofar as the Units or any part thereof was built to the Builder's specifications, furnished under this Agreement, constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same and the Builder shall pay all damages and costs awarded therein against the Vendee or the Lessee.

In case the Units, or any part thereof, are in such suit held to constitute infringement and the use of the Units or part is enjoined, the Builder shall, at its option and at its own expense, either procure for the Vendee the right to continue using the Units or part, or replace same with non-infringing equipment or part, or modify it so it becomes non-infringing, or remove the infringing equipment or infringing part and refund the purchase price for such infringing equipment or infringing part and the transportation and installation costs thereof.

The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale, or use of devices not included in and covered by the Specifications.

The foregoing states the entire liability of the Builder for patent infringement by said Units or any part thereof.

The Builder hereby:

(a) represents and warrants to the Vendee its successors and as-

signs, that this Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Vendee, this Conditional Sale Agreement is, insofar as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms and that it is now in force without amendment thereto;

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

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

ARTICLE 14. *Assignments.* The Vendee will not (a) except as provided in Article 11 hereof or pursuant to the operation of § 13 of the Tax Indemnity Agreement, transfer the right to possession of any of the Units or (b) sell, assign, transfer or otherwise dispose of the rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of the Vendor hereunder (including, without limitation, rights and remedies against the Vendee and the Lessee) and (ii) provides that the Vendee or a successor corporation shall remain liable for all its obligations under this Agreement subject, however, to the provisions of Article 1(a). Subject to the preceding sentence, any such sale, assignment, transfer or disposition may be made by the Vendee without the vendee, assignee or transferee assuming any of the obligations of the Vendee hereunder.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Vendee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Units in accordance herewith or to respond to its warranties and indemnities contained or referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained or referred to in Articles 2, 3, 4, 6 and 13 hereof and this Article 14, or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee together with a counter-part or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's rights, title and interest in and to the Units and this Agreement, or in and to a portion thereof, as the case may be, subject only

to such reservations as may be contained in such assignment. From and after the receipt by the Vendee of the notification of any such assignment, all payments thereafter to be made by the Vendee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

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

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

The Vendee will (a) in connection with settlement for the Units, deliver to the assignee, at the time of delivery of notice fixing a closing date with respect to such Units, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counter-parts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts or copies of any other certificate or paper required by the Vendor as may reasonably be requested.

If the Builder shall not receive the aggregate Purchase Price in respect of the Units on the Closing Date, the Builder will promptly notify the Vendee of such event and, if such amount shall not have been previously paid, the Vendee will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement

those Units of Equipment whose aggregate Purchase Price shall not have been received.

ARTICLE 15. *Defaults.* In the event that any one or more of the following events of default with respect to the Vendee shall occur and be continuing (without regard to the limitations provided for in the last paragraph of Article 4 hereof or in Article 21 hereof), to wit:

(a) If there is no Event of Default outstanding under the Lease, the Vendee shall fail to pay in full any sum payable by it under this Agreement when payment thereof shall be due hereunder and such default shall continue for 10 days; or

(b) The Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Units, on its part to be kept or performed, or to make provisions satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this 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), if all the obligations of the Vendee, 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 Vendee or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, subject to the rights of the Lessee set forth in Article 11 hereof, (i) cause the Vendee to terminate the Lease immediately and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid indebtedness in respect of the Purchase Price of the Units purchased by the Vendee, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid

after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Units purchased by the Vendee so payable, with interest as aforesaid, and to collect such judgment out of the Units. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or, with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

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

ARTICLE 16. *Remedies.* At any time during the continuance of a Declaration of Default, the Vendor may, subject to the rights of the Lessee set forth in Article 11 hereof, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to said Vendee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the Vendee, the Lessee or any other person. For such purpose, the Vendee will obtain for the Vendor from the Lessee the rights to enter upon the premises of Vendee or the Lessee or any other premises where the Units may be located and to use and employ in connection with such removal any supplies, services and aids, including, but not limited, to diesel fuel or other necessary pertoleum products, and any available trackage and other facilities or means of the Vendee or the Lessee, with or without process of law.

In case the Vendor shall demand possession of the Units pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Units to the Vendor, the Vendee shall (subject to the rights of the Lessee set forth in Article 11 hereof), at its own cost, expense and risk, forthwith and in the usual manner, cause the Units to be moved to such point or points on lines of the Lessee and shall there deliver the Units or cause them to be delivered to the Vendor. The Vendee shall obtain for the Vendor from the Lessee the right to elect, at the option of the Vendor, to keep the Units on any of the lines or premises of the Lessee for a period of one year or until the Vendor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose said Vendee agrees to cause

the Lessee to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee. The Vendee hereby expressly waives, and agrees to obtain from the Lessee a waiver of, any and all claims against the Vendor and its assigns 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 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Units in satisfaction of the entire indebtedness in respect of the Purchase Price of the Units and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Units shall be given to the Vendee, the Builder and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Units and no objection is made thereto within the 30-day period described in the second proviso below, all the rights of the Vendee in the Units shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Units; *provided, however,* that if the Vendee before the expiration of the 30-day period described in the proviso below, pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect to the Purchase Price of the Units, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and otherwise maintaining the Units after such Declaration of Default, then in such event absolute right to the possession of, title to and property in the Units shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Builder, the Lessee 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 Units, then the Vendor may not so retain the Units, but shall sell them or continue to hold them pending sale as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Units in any other manner, it shall be deemed to have elected to sell the Units in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee, the Builder and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11 hereof, sell the Equipment, or one or more of the Units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase

Price of the Units together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Units for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Units shall pass to and vest in the Vendee subject to the rights, if any, of the Lessee. The proceeds of such sale or other disposition, less the attorney's fees and any other expenses incurred by the Vendor in retaking possession of removing, storing, holding, preparing for sale and selling or otherwise disposing of the Units, 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 Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Builder, the Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Builder, the Vendee and the Lessee 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 Units, or any Unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Vendee or as otherwise provided in the Guaranty Agreement.

If, after applying all sums of moneys realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendor may bring suit therefor and shall be entitled to receive a judgment therefor against the Vendee, the enforcement of which shall be subject, however, to the limitations of Article 1(a).

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

The foregoing provisions of this Article 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by an applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Vendee to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

If there should occur an event of default hereunder but not under the Lease then except as otherwise provided in this Agreement, the Vendee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more Units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18. *Recording.* The Vendee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of the Interstate Commerce Act; and the Vendee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its Security Title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Vendee will

promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

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

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

ARTICLE 20. *Notice.* Any notice hereunder to any of the parties and others designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Vendee:
J. P. Morgan Interfunding Corp.
37 Wall Street
New York, N.Y. 10005.
Attn: Lease Administration

(b) to the Builder, at Electro-Motive Division, LaGrange, Illinois 60525, Attn: Division Comptroller;

(c) to any assignee of the Vendor, or of the Vendee at such address as may have been furnished in writing to the Vendee, or the Vendor, as the case may be;

(d) to the Lessee; 139 W. Van Buren St., Chicago, Illinois 60605

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

ARTICLE 21. *Immunities.* 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 Vendee or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 22. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of Pennsylvania; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if

any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 23. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 24. *Execution.* This Agreement may be executed in any number of counterparts, but the counterpart delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Agent shall be deemed to be the original counterpart. Although this Agreement is dated as of the date first above written for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION

[CORPORATE SEAL]

Attest:

Assistant Secretary

by

Vice President

J. P. MORGAN INTERFUNDING CORP.

[CORPORATE SEAL]

Attest:

Assistant Secretary

by

Vice President

CONDITIONAL SALE AGREEMENT

STATE OF ILLINOIS
COUNTY OF COOK } ss.:

On this 26th day of OCTOBER, 1976, before me personally appeared P. K. HOGLAND, to me personally known, who being by me duly sworn says that he is a Vice President of GENERAL MOTORS CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Agnes L. Hapke
Notary Public

[NOTARIAL SEAL] MY COMMISSION EXPIRES FEBRUARY 10, 1978

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

On this th day of , 1976, before me personally appeared , to me personally known, who being by me duly sworn says that he is Vice President of J. P. MORGAN INTERFUNDING CORP., that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

NOTARIAL SEAL

ANNEX A

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Price	Total Price	Delivery
GP38-2	8090, as amended by 8090-3	1 25	4326 4327–4351	398,675 399,415	398,675 9,985,375	F.O.B. McCook, Illinois
Total		26		Total	$10,384,050	

ANNEX B

Payment Numbers/Date	% Age
Payments 1 through 32, due April 1, 1977, through Jan. 1, 1985 . . .	3.0148
Payments 33 through 59, due April 1, 1985, through Oct. 1, 1991 . . .	1.2456