

RECORDATION NO. 9362 Filed & Recorded

MAY 3 1978 10 22 AM H. SWAINE & MOORE

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INTERSTATE COMMERCE COMMISSION
1000 PURCHASE MANHATTAN PLAZA

NEW YORK, N.Y. 10005

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Date
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ICC Washington, D. C.

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INTERSTATE COMMERCE COMMISSION

RECORDATION NO. 9362 Filed & Recorded

MAY 3 1978 10 22 AM

INTERSTATE COMMERCE COMMISSION

Consolidated Rail Corporation
Participation Agreement Dated as of April 1, 1978
9% Conditional Sale Indebtedness

Dear Sir:

Pursuant to Section 20c of the Interstate Commerce Act and the Commission's rules and regulations thereunder, as amended, I enclose herewith on behalf of Consolidated Rail Corporation for filing and recordation counterparts of the following documents:

1(a) Conditional Sale Agreement dated as of April 1, 1978, between United States Trust Company of New York, as trustee, vendee, and General Motors Corporation (Electro-Motive Division), as builder, vendor;

(b) Agreement and Assignment dated as of April 1, 1978, between General Motors Corporation (Electro-Motive Division), as builder, and Mellon Bank, N.A., as agent, assignee;

2(a) Lease of Railroad Equipment dated as of April 1, 1978, between Consolidated Rail Corporation, as lessee, and United States Trust Company of New York, as trustee, lessor;

Handwritten signature and notes on the left margin.

RECEIVED
MAY 3 1978
COMMUNICATION UNIT

(b) Assignment of Lease and Agreement dated as of April 1, 1978, between United States Trust Company of New York, as trustee, lessor, and Mellon Bank, N.A., as agent, vendor.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(1) Agent-Vendor-Assignee:

Mellon Bank, N.A.
Mellon Square
Pittsburgh, Pennsylvania 15230

(2) Trustee-Vendee-Lessor:

United States Trust Company
of New York
130 John Street
New York, N. Y. 10038

(3) Builder-Vendor:

General Motors Corporation
(Electro-Motive Division)
La Grange, Illinois 60525

(4) Lessee:

Consolidated Rail Corporation
1310 Six Penn Center Plaza
Philadelphia, Pennsylvania 19104

Please file and record the documents referred to in this letter and cross-index them under the names of the Agent-Vendor-Assignee, the Trustee-Vendee-Lessor, the Builder-Vendor and the Lessee.

The equipment covered by the aforementioned documents consists of the following:

Thirty-three (33) 3,000 h.p. Model GP40-2 diesel-electric locomotives bearing identifying numbers CR3313 through CR3345, both inclusive; and

Forty-three (43) 2,000 h.p. Model GP38-2 diesel-electric locomotives bearing identifying numbers CR8181 through CR8223, both inclusive.

There is also enclosed a check for \$100 payable to the Interstate Commerce Commission, representing the fee for recording the Conditional Sale Agreement and related Agreement and Assignment (together constituting one document) and the Lease of Railroad Equipment, and related Assignment of Lease and Agreement (together constituting one document).

Please stamp all counterparts of the enclosed documents with your official recording stamp. You will wish to retain one copy of the instruments for your files. It is requested that the remaining counterparts be delivered to the bearer of this letter.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for Consolidated
Rail Corporation

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

Encls.

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BY HAND

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RECORDATION NO. Filed & Recorded

MAY 3 1978-10 25 AM

INTRA-STATE COMMERCE COMMISSION

[CS&M Ref. 2043-826]

CONDITIONAL SALE AGREEMENT

Dated as of April 1, 1978

between

GENERAL MOTORS CORPORATION
(ELECTRO MOTIVE DIVISION)

and

UNITED STATES TRUST COMPANY OF NEW YORK,
as Trustee under
a Trust Agreement

9% Conditional Sale Indebtedness due 1993

Conditional Sale Agreement

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* This Table of Contents has been included in this document for convenience only and does not form a part of or affect any construction or interpretation of this document.

CONDITIONAL SALE AGREEMENT dated as of April 1, 1978, between the corporation named in Item 1 of Annex A hereto (said corporation being hereinafter called the "Builder" or the "Vendor", as the context may require, all as more particularly set forth in Article 1 hereof) and UNITED STATES TRUST COMPANY OF NEW YORK, acting as Trustee (the "Vendee") under a Trust Agreement (the "Trust Agreement") dated as of the date hereof with General Electric Credit Corporation (the "Beneficiary").

WHEREAS the Builder has agreed to construct, conditionally sell and deliver to the Vendee, and the Vendee has agreed to conditionally purchase, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (the "Equipment");

WHEREAS the Vendee is entering into a Lease of Railroad Equipment with Consolidated Rail Corporation (the "Lessee") in substantially the form annexed hereto as Annex C (the "Lease") pursuant to which the Lessee will lease from the Vendee all the units of Equipment so purchased, or such lesser number of units as are delivered and accepted hereunder;

WHEREAS Mellon Bank, N.A. (hereinafter called the "Assignee" or the "Vendor" as more particularly set forth in Article 1 hereof), is acting as Agent for investors pursuant to a Participation Agreement dated as of the date hereof (the "Participation Agreement") among the Assignee, the Lessee, the Vendee, the Beneficiary and the party named in Schedule A thereto, and all obligations of the Vendee to the Builder under the Purchase Order (as defined in the Participation Agreement) will be superseded by this Agreement; and

WHEREAS the Builder will guarantee to the Vendee and the Assignee certain obligations under this Agreement and the Lease pursuant to a Guaranty Agreement dated as of the date hereof (the "Guaranty Agreement", and the Builder in its capacity as guarantor thereunder is hereinafter sometimes called the "Guarantor").

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

ARTICLE 1. Assignment; Definitions. The parties hereto contemplate that the Vendee will furnish that portion of the Purchase Price (as hereinafter defined) for the Equipment as is required under subparagraph (a) of the third paragraph of Article 4 hereof and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by the Assignee pursuant to an Agreement and Assignment (the "CSA Assignment") dated as of the date hereof between the Builder and the Assignee.

The term "Vendor", whenever used in this Agreement, means, before any assignment of its rights hereunder, the Builder 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 Builder and any successor or successors for the time being to its manufacturing properties and business.

The parties hereto contemplate that the Vendee will assign to the Assignee, as security for the payment and performance of all the Vendee's obligations hereunder, all right, title, and interest of the Vendee in and to the Lease, pursuant to an Assignment of Lease and Agreement in the form of Annex D hereto (the "Lease Assignment").

ARTICLE 2. Construction and Sale. Pursuant to this Agreement, the Builder shall construct the units of Equipment and will conditionally sell and deliver to the Vendee, and the Vendee will conditionally purchase from the Builder and accept delivery of and pay for (as hereinafter provided and subject to the limitations hereinafter set forth), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B 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"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all United States Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads

reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment, will not incorporate any used components (or, if such components are incorporated, their aggregate cost will not be more than 20% of the cost of material and parts used in constructing such unit) and will not have been used by any person so as to preclude the "original use" of such unit, within the meaning of Sections 48(b)(2) and 167(c)(2) of the Internal Revenue Code of 1954, as amended, from commencing with the Vendee.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at the place or places specified in Annex B hereto, freight charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made (i) until this Agreement, the Lease, the CSA Assignment and the Lease Assignment have been filed pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; (ii) subsequent to the commencement of any proceedings or the occurrence of any event specified in clauses (c), (d) or (f) of Article 15 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default (any such commencement, occurrence, event of default or event being hereinafter in this Agreement called a "Default"); or (iii) if the Purchase Price for such unit when added to the aggregate Purchase Price of (A) all units theretofore delivered and accepted under and made subject to this Agreement and (B) all other units proposed to be delivered and accepted under and made subject to this Agreement concurrently with such unit would exceed the Maximum Purchase Price for the Equipment specified in Item 5 of Annex A hereto. The Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from the Vendee or the Assignee of a Default, or that the Maximum Purchase Price specified in Item 5 of Annex A hereto would be exceeded by any subsequent delivery of a unit, and (b) until it receives notice from the Vendee and the Assignee that the conditions contained in Paragraphs 7 and 8 of the Participation Agreement have been met.

Any unit of Equipment not delivered at the time of

receipt by the Builder of the notice specified in clause (a) of the last sentence of the first paragraph of this Article 3 and any unit of Equipment not delivered and accepted hereunder on or prior to December 15, 1978, by reason of noncompliance with the conditions referred to in the next preceding paragraph or causes set forth in the next succeeding paragraph or otherwise shall be excluded from this Agreement and the Vendee shall be relieved of its obligation to purchase and pay for such unit of Equipment. If any unit of Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the Vendee and the Builder (and any assignee of the Builder) shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement the Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof from the Builder, upon the satisfaction or waiver of any conditions of the Purchase Order, all as provided in Paragraph 1 of the Participation Agreement. The Vendee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as may be reasonably requested by the Lessee for the purpose of acknowledging and perfecting the interest of the Lessee in any unit of Equipment so excluded from this Agreement, and the Vendee shall have no further obligation or liability in respect of units so excluded.

The Builder's obligation as to the time of delivery set forth in Annex B 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.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Vendee (who may be employees of the Lessee) and the Builder shall grant to such inspectors reasonable access to its plant. The Builder agrees to inspect the materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or 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, and if

each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Vendee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (the "Certificate of Acceptance") substantially in the form of Schedule C to the Lease; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Upon delivery and acceptance of each such 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 warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of the Vendee of any unit of Equipment excluded from this Agreement pursuant to the first paragraph of Article 4 hereof shall be ineffective, ab initio, to create in or transfer to the Vendee any legal or beneficial right or interest in such unit or (except as provided in the first paragraph of Article 4 hereof) to impose on the Vendee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to the Vendee shall be held by the Vendee solely as trustee for the benefit of the Builder.

ARTICLE 4. 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 Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices per unit of the Equipment as so increased or decreased as set forth in the Builder's invoice or invoices delivered to the Vendee (the "Invoices") and, if the Purchase Price is other than the base price or prices set forth in Annex B, the Invoices shall be accompanied by, or have endorsed thereon, the agreement or approval of the Lessee and the Vendee. If on any Closing Date the aggregate Purchase Price of the Equipment for which settlement has theretofore been or is then being made would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as the Vendee may at its option agree to prior to delivery of any unit or units of Equipment that, but for

such agreement, would be excluded from this Agreement), the Builder (and any assignee of the Builder) and the Vendee will enter into an agreement excluding from this Agreement 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 not more than such Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

The Equipment shall be settled for in such number of groups of units of the Equipment as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such date (which shall be a business day not earlier than May 10, 1978, and not later than December 15, 1978, such later date being hereinafter called the "Cut-Off Date"), occurring not more than ten business days following presentation by the Builder to the Vendee of the Invoices and Certificates of Acceptance for such 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 six 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 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 immediately available funds 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 32.0665% of the aggregate Purchase Price of such Group plus (ii) the amount, if any, by which (x) the Purchase Price (not paid pursuant to clause (i)) of all units of Equipment for which settlement has theretofore or is then being made, as set forth in the Invoices therefor exceeds (y) the Maximum CSA Indebtedness specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable with respect to prior Invoices pursuant to this clause (ii); and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment, less the aggregate

amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (the "CSA Indebtedness") shall be payable on the 30 consecutive dates occurring semiannually following the earlier of (i) the last Closing Date under this Agreement, and (ii) December 15, 1978 (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 CSA Indebtedness from time to time outstanding shall bear interest at the rate of 9% per annum payable, to the extent accrued, on the earlier of (i) the last Closing Date under this Agreement and (ii) December 15, 1978, and on each Payment Date. The instalments of principal payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the allocation set forth in Schedule I hereto (subject to the provisions of Article 7 hereof) and the aggregate of such instalments of principal will completely amortize the CSA Indebtedness. The Vendee will furnish to the Vendor and the Lessee promptly after the last Closing Date a schedule 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 Vendee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 10% per annum (the "Overdue Rate").

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 7 hereof, the Vendee shall not have the privilege of prepaying any portion of the CSA Indebtedness prior to the date it becomes due.

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of the Vendee or any assignee of the Vendee for all payments to be made by it under this Agreement, including any liability arising out of or in connection with the performance of its obligations

hereunder and excluding only the obligations set forth in the proviso in the third paragraph of Article 12 hereof and the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as hereinafter defined), and such payments shall be made by the Vendee only to the extent that the Vendee (or any such assignee) shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendee (and any such assignee) shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, it is agreed that the Vendee (and such assignee) (i) make no representation or warranty with respect to, and are not responsible for, the execution, validity, sufficiency or enforceability of the Lease (or any document relative thereto) in so far as it relates to the Lessee 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 Equipment and to the Vendor's rights under the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" 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 such assignee) at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease, other than amounts paid by the Lessee by way of indemnity pursuant to §§ 6 or 16 of the Lease, except to the extent such indemnity under such § 6 is required to be paid to the Builder or the Vendor pursuant to Article 6 hereof, and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and (ii) 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 Vendee (or any such assignee) and as shall equal the portion of the CSA Indebtedness (including prepayments thereof

required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid 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 Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) received by the Vendee (or any such assignee) prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including such prepayments) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Vendee (or any such assignee) 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. Notwithstanding anything to the contrary contained in this Agreement, in the event the Vendor 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, the Vendor will limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the Equipment for the full unpaid Purchase Price of the Equipment and accrued interest thereon and all other payments and obligations hereunder.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain its title and interests in the Equipment until the Vendee shall have made all its payments under this Agreement, notwithstanding any provision of this Agreement limiting the liability of the Vendee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Vendee and the Lessee as provided in this Agreement and the Lease. Any and all parts installed on and additions and replacements made to any unit of the Equipment (except for any such parts owned by the Lessee pursuant to § 9 of the Lease) 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 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with accrued interest and

all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment 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 Equipment releasing its title to and interest 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 and (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 Equipment. The Vendee hereby waives any and all rights, existing or that may be acquired, in or to the payment of any penalty 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 requiring the filing of the same, except for failure so to do within a reasonable time after written demand by the Vendee.

ARTICLE 6. Taxes. All payments to be made by the Vendee 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 gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales or use or rental taxes], taxes measured by net income, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by this Agreement or the Equipment or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions"), all of which impositions the Vendee assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Vendee will also pay promptly all impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof (except as provided above) 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 or interests of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Vendee shall be under no obligation to pay any imposi-

money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal, if any, on and of the CSA Indebtedness due on such date) to prepay without penalty or premium the instalments of the CSA Indebtedness (ratably in accordance with the unpaid balance of each such instalment) and the Vendee will promptly furnish to the Vendor and the Lessee a revised schedule of payments of principal and interest with respect to the CSA Indebtedness thereafter to be made. In the event of the requisition for use by the United States Government or any other government or governmental entity of any unit of the Equipment not constituting a Casualty Occurrence, all of the Vendee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

Upon payment by the Vendee 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 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, at the expense of the Vendee, an appropriate instrument confirming such passage to the Vendee of all the Vendor's right, title and interest, and the release of the Vendor's security 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 of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the Casualty Payment Date with respect to such unit (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such Casualty Payment Date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 4 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

If the Vendor shall receive any insurance proceeds or condemnation payments in respect of such units suffering a Casualty Occurrence, the Vendor shall, subject to having received payment of the Casualty Value and pro-

vided no Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Vendee. All insurance proceeds or condemnation payments received by the Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to the Vendee upon reasonable proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired, provided no Default shall have occurred and be continuing.

ARTICLE 8. Reports and Inspections. On or before April 30 in each year, commencing with the year 1979, the Vendee shall cause to be furnished to the Vendor an accurate statement to the effect set forth in § 8 of the Lease.

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Vendee will not permit the identification number of any unit 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 and deposited by the Vendee in all public offices where this Agreement shall have been filed 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 unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

ARTICLE 10. Compliance with Laws and Rules. During the term of this Agreement, the Vendee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all applicable laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads, if applicable, and with all lawful rules

of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement, addition or modification of or to any part on any unit of the Equipment, the Vendee will conform therewith at its own expense; provided, however, that the Vendee or 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 reasonable 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 Equipment to the Vendee, 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 parties hereto acknowledge that the Vendee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and 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.

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 or security interest on or with respect to the Equipment, or any unit thereof, or the interest of the Vendor therein, or the Vendee's interests in the Lease and the payments to be made thereunder equal or superior to the Vendor's title or interests therein, and will promptly discharge any such lien, charge or security interest 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the title or interests of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of such liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

The foregoing provisions of this Article 12 shall be subject to the limitations set forth in the last paragraph of Article 4 hereof and the provisions of Article 21 hereof; provided, however, that the Vendee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Vendee or its successors or assigns, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or the Vendee's interest in the Lease and the payments to be made thereunder, but the Vendee 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 or administrative proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

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 title to or a security interest in the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any claim for patent, trademark or copyright infringement, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by

the Vendor pursuant to any of the provisions of this Agreement, except however, in the case of the Builder, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any 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 release of the Vendor's security interest in, the Equipment, 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 not be released from its obligations hereunder (except as provided in Article 21 hereof) in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

The Builder represents and warrants to the Vendee that, at the time of delivery and acceptance of each unit of Equipment under this Agreement, the Vendee will have good and marketable title to such unit, free and clear of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendor under this Agreement and the rights of the Lessee under the Lease.

The Builder represents that it is not entering into this Agreement, or into any other transaction contemplated by the Participation Agreement, directly or indirectly in connection with any arrangement or understanding by it in any way involving any employee benefit plan (other than a governmental plan) with respect to which it, or, in so far as is known to it, any party to the Participation Agreement is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974, as amended.

The agreements of the parties relating to the Builder's warranty of material and workmanship and patent indemnification, and the agreement of the parties relating to the Builder's limitation of liability, are set forth in Items 3 and 4 of Annex A hereto.

ARTICLE 14. Assignments. The Vendee will not, except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment, or sell, assign or otherwise dispose of any of its rights under this Agreement, except as provided in Article VII of the Trust Agreement.

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 Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve the Vendee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Vendee, the Lessee and the Guarantor, together with a copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the 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 at such address as it may direct.

The Vendee recognizes that this Agreement will be assigned to the Assignee as provided in the CSA Assignment. 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 the rights of the assignee to the entire unpaid indebtedness in respect of the 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 Builder with respect to the Equipment or the 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 or the Lessee against and only against the Builder.

ARTICLE 15. Defaults. In the event that any one or more of the following events of default shall occur and be continuing to wit:

(a) the Vendee shall fail to pay in full any sum payable by the Vendee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) and such default shall continue for ten business days after the date such payment is due and payable; or

(b) default shall be made in the observance or performance of any other of the conditions and agreements on the part of the Vendee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of the Vendee) or the Lessee contained herein or in any agreement entered into concurrently herewith relating to the financing of the Equipment (other than the Lease), and such default shall continue for 30 days after the earlier of (i) written notice from the Vendor to the Vendee and the Lessee specifying the default and demanding that the same be remedied and (ii) the date on which such default shall first become known to any trust officer of the Vendee; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act (as now constituted or as hereafter amended, including any successor provision thereto) 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 Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Vendee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder or of the Lessee under the Lease under any bankruptcy or insolvency laws, or laws 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 such obligations), 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 Vendee under this Agreement or of the Lessee under the Lease, as the case may be, shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Vendee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Vendee shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession or use of any unit of the Equipment and the Vendee shall, for more than 30 days after demand in writing by the Vendor, fail to secure a reassignment or retransfer to the Vendee of such Agreement, interest or right; or

(f) the occurrence of any of the following:

(i) Involuntary Bankruptcy Proceedings--a receiver, liquidator or trustee of the Vendee or the Lessee, or of any of the property of either, is appointed by court order and such order remains in effect for more than 30 days; or the Vendee, or the Lessee, is adjudicated bankrupt or insolvent; or any of the property of either is sequestered by court order and such order remains in effect for more than 30 days; or a petition is filed against

the Vendee or the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Vendee, or the Lessee, files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Vendee or the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt, or consents to the appointment of a receiver, trustee or liquidator of the Vendee, or the Lessee, or of all or any part of the property of either;

followed by a good faith determination by the Assignee and notification thereof to the Vendee, the Beneficiary and the Lessee within 45 days following knowledge by the Assignee of any such occurrence that, as a result, it deems itself inadequately secured; or

(g) an Event of Default shall have occurred under the Lease; provided, however, that any Event of Default under the Lease caused by the failure of the Lessee to make any payment due thereunder shall not be deemed to be an event of default hereunder if, prior to a Declaration of Default (as hereinafter defined), the Vendee pays to the Vendor in immediately available funds an amount equal to (a) the amount which the Lessee failed to pay minus (b) any portion of such amount which the Vendor would have been required to pay over to the Vendee pursuant to the Lease Assignment, or the Guarantor pays to the Vendor in immediately available funds an amount equal to the amount which the Lessee failed to pay plus any interest on overdue rentals; provided, further, that no such payment by the Vendee or the Guarantor shall prevent an Event of Default under the Lease

the Vendee or the Lessee under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and is not dismissed within 30 days after such filing;

(ii) Voluntary Petitions--the Vendee, or the Lessee, files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any petition against it under any such law; or

(iii) Assignments for Benefit of Creditors, etc.--the Vendee or the Lessee makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due or its willingness to be adjudicated a bankrupt, or consents to the appointment of a receiver, trustee or liquidator of the Vendee, or the Lessee, or of all or any part of the property of either;

followed by a good faith determination by the Assignee and notification thereof to the Vendee, the Beneficiary and the Lessee within 45 days following knowledge by the Assignee of any such occurrence that, as a result, it deems itself inadequately secured; or

(g) an Event of Default shall have occurred under the Lease; provided, however, that any Event of Default under the Lease caused by the failure of the Lessee to make any payment due thereunder shall not be deemed to be an event of default hereunder if, prior to a Declaration of Default (as hereinafter defined), the Vendee pays to the Vendor in immediately available funds an amount equal to (a) the amount which the Lessee failed to pay minus (b) any portion of such amount which the Vendor would have been required to pay over to the Vendee pursuant to the Lease Assignment, or the Guarantor pays to the Vendor in immediately available funds an amount equal to the amount which the Lessee failed to pay plus any interest on overdue rentals; provided, further, that no such payment by the Vendee or the Guarantor shall prevent an Event of Default under the Lease

from being an event of default hereunder if there shall have occurred more than two consecutive Events of Default under the Lease caused by the failure of the Lessee to make any payment due thereunder, and, except as herein-after provided, any additional Events of Default under the Lease shall constitute events of default hereunder whether or not the Vendee or the Guarantor makes any payment to the Vendor; provided, further, however, that if the Vendee and/or the Guarantor shall exercise such rights to cure Events of Default under the Lease as hereinabove specified and if the Lessee shall thereafter make two consecutive semiannual rental payments, the rights of the ~~lessor~~ ^{Vendee} and/or the Guarantor to cure Events of Default under the Lease as hereinabove specified shall be reinstated;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the proviso in the second paragraph of § 4 of the Lease relating to termination and to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, cause the Lease immediately upon such notice to terminate, but the Lessee shall remain liable as therein provided, and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid CSA Indebtedness, 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 Overdue Rate, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, subject to the provisions of Articles 4 and 21 hereof, and to collect such judgment out of the "income and proceeds of the Equipment" wherever situated.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to the Vendee and the Lessee 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 of termination of the Lease had been made or given. Notwith-

standing the provisions of this paragraph, it is expressly 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. Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, at any time during the continuance of a Declaration of Default, the Vendor may, 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 any portion thereof, without liability to return to the 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 or any other person and for such purpose may enter upon the premises of the Vendee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Vendee, subject to all mandatory requirements of due process of law.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the Vendee shall, at its own expense and risk:

(a) forthwith and in the usual manner cause the Equipment to be placed upon such storage tracks of the Lessee or any of its affiliates as the Vendor reasonably may designate;

(b) permit the Vendor to store the Equipment on such tracks at the risk of the Vendee without charge for insurance, rent or storage until the Equipment has been sold, leased or otherwise disposed of by the Vendor; and

(c) cause the Equipment to be transported to any reasonable place on the lines of railroad operated by the Lessee or any of its affiliates or to any connecting carrier for shipment, all as directed by the Vendor.

During any storage period, the Vendee will, at its own cost and expense, insure, maintain and keep each such unit in good order and repair and will permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers, lessees and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction, the Vendor shall be entitled to a decree against the Vendee requiring specific performance hereof. The Vendee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness 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 Vendee, the Beneficiary, the Guarantor and the Lessee by telegram or registered mail, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee or for its account may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Vendee, 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 CSA Indebtedness, 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 Vendee; provided, further, that if the Vendee, the Lessee, the Guarantor or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be

permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

Subject to the Lessee's rights of possession, use and assignment under §§ 4 and 12 of the Lease, 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 and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee, the Lessee or any other party claiming from, through or under the Vendee or the Lessee, 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 CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee. The proceeds of such sale or other disposition, less the attorneys' 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 Equipment shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at New York, New York or 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 in a commercially reasonable manner. The Vendor, the Vendee, the Lessee or the Guarantor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered

for sale. The Vendee, the Lessee and the Guarantor shall be given written notice of such sale or the making of a contract for such sale not less than ten business days prior thereto, by telegram or registered mail. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where fewer than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of the Lessee, the Vendee 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. In the event that the Vendor shall be the purchaser of the Equipment, 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 or any part of 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 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 granted to the Vendee or the Lessee 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 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 all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Vendee shall pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Overdue Rate, and, if the Vendee shall fail to pay such

deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of the last paragraph of Article 4 hereof, be entitled to recover a judgment therefor against the Vendee. 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.

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 any applicable law of any jurisdiction 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.

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, 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 in accordance with Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; 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 interest in 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.

Except for the Participation Agreement, this Agreement, including the Annexes hereto, exclusively and 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.

The parties hereto acknowledge that the Guaranty Agreement contains certain provisions regarding the consent of the Guarantor in the event of any modification of this Agreement or any waiver of any of its provisions or conditions which would either individually or cumulatively have a material adverse effect upon the Guarantor.

ARTICLE 20. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly made if delivered or mailed to it by first class mail (unless otherwise specifically required herein), postage prepaid, at the following addresses:

(a) to the Vendee, at 130 John Street, 4th Floor, New York, New York 10038, Attention of Corporate Trust and Agency Division, with a copy to the Beneficiary at its address specified in the Participation Agreement,

(b) to the Lessee, at 1310 Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Vice President & Treasurer,

(c) to the Builder or the Guarantor, at its address specified in Item 1 of Annex A hereto,

(d) to the Assignee, at its address at Mellon Square, Pittsburgh, Pennsylvania 15230, Attention of Corporate Trust Division,

(e) if to the Beneficiary, at its address at P.O. Box 8300, Stamford, Connecticut 06904, Attention of Loan Officer, Air/Rail Leasing,

(f) to any assignee of the Vendor or Assignee, or of the Vendee, at such address as may have been furnished in writing to the Vendee, or the Vendor or the Assignee, as the case may be, and to the Lessee, by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties referred to above.

ARTICLE 21. 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, as such, past, present or future, of the parties hereto (or the Beneficiary) 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, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the second paragraph of Article 16 and under Articles 3, 6, 7 (other than the second and third sentences of the second paragraph thereof), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. 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 the basis for an event of default pursuant to Article 15 hereof.

Anything in this Agreement to the contrary notwithstanding, each and all of the representations, undertakings and agreements herein made on the part of the Vendee are

made and intended not as personal representations, undertakings and agreements by United States Trust Company of New York or for the purpose or with the intention of binding it personally but are made and intended for the purpose of binding only the Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and no personal liability or responsibility is assumed by or shall at any time be enforceable against the said trust company (except liability under the proviso contained in the last paragraph of Article 12 hereof) or the Beneficiary (except as provided in the Trust Agreement) on account of any representation, undertaking or agreement hereunder of the Vendee or the Beneficiary, either expressed or implied, all such personal liability, if any, being expressly waived 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 the Vendor, making claim hereunder, may look to said Estate for satisfaction of the same.

ARTICLE 22. Certain Representations and Warranties of Builder. The Builder hereby represents and warrants to the Vendee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for valid consideration and that, assuming due authorization, execution and delivery by the Vendee, this Agreement is a legal, valid and binding agreement of the Builder, enforceable in accordance with its terms.

ARTICLE 23. Law Governing. The Vendee warrants that its chief place of business is located in the state specified in clause (a) of Article 20 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; 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 24. Execution. This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pursuant to the

CSA Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, 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
(ELECTRO-MOTIVE DIVISION)

by P.K. Hopkins
Vice President

[Corporate Seal]

Attest:

W.H. Howard
Attesting Secretary

UNITED STATES TRUST COMPANY OF
NEW YORK, as Trustee,

by G. Samuel
Assistant Vice President

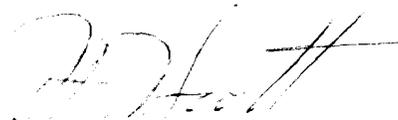
[Corporate Seal]

Attest:

James B. Hughes
Assistant Secretary

STATE OF ILLINOIS,)
) ss.:
COUNTY OF COOK,)

On this 27TH day of April 1978, before me personally appeared _____, 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.



Notary Public

[Notarial Seal]

My Commission expires _____

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

On this 26th day of April 1978, before me personally appeared GEORGE BOSWELL, to me personally known, who, being by me duly sworn, says that he/she 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, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Trustees, and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

CAROL E. WEINBERG
Notary Public, State of New York
ID: 000000001
Qualified in Bronx County
Certificate Filed in New York County
Commission Expires March 30, 1980

[Notarial Seal]

My Commission expires _____

SCHEDULE I

Allocation Schedule of Each \$1,000,000 of CSA
Indebtedness Payable in Instalments on the 30
consecutive semiannual dates following the
earlier of (i) the last Closing Date under
this Agreement and (ii) December 15, 1978

<u>Payment Date</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Debt Service</u>	<u>Ending Principal Balance</u>
0				1,000,000.00
1	45,000.00	16,391.54	61,391.54	983,608.46
2	44,262.38	17,129.16	61,391.54	966,479.30
3	43,491.57	17,899.97	61,391.54	948,579.33
4	42,686.07	18,705.47	61,391.54	929,873.86
5	41,844.32	19,547.22	61,391.54	910,326.64
6	40,964.70	22,092.04	63,056.74	888,234.60
7	39,970.56	23,086.18	63,056.74	865,148.42
8	38,931.68	28,353.17	67,284.85	836,795.25
9	37,655.79	29,629.06	67,284.85	807,166.19
10	36,322.48	30,962.37	67,284.85	776,203.82
11	34,929.17	32,355.68	67,284.85	743,848.14
12	33,473.17	33,811.68	67,284.85	710,036.46
13	31,951.64	35,333.21	67,284.85	674,703.25
14	30,361.65	36,923.20	67,284.85	637,780.05
15	28,700.10	38,584.75	67,284.85	599,195.30
16	26,963.79	40,321.06	67,284.85	558,874.24
17	25,149.34	42,135.51	67,284.85	516,738.73
18	23,253.24	38,445.12	61,698.36	478,293.61
19	21,523.21	40,175.15	61,698.36	438,118.46
20	19,718.33	35,594.28	55,309.61	402,524.18
21	18,113.59	37,196.02	55,309.61	365,328.16
22	16,439.77	32,584.24	49,024.01	332,743.92
23	14,973.48	34,050.53	49,024.01	298,693.39
24	13,441.20	29,621.24	43,062.44	269,072.15
25	12,108.25	30,954.19	43,062.44	238,117.96
26	10,715.31	28,025.68	38,740.99	210,092.23
27	9,454.15	29,286.84	38,740.99	180,805.44
28	8,136.24	56,928.17	65,064.41	123,877.27
29	5,574.48	59,489.93	65,064.41	64,387.34
30	2,897.43	64,387.34	67,284.77	--

Annex A

to

Conditional Sale Agreement

- Item 1: General Motors Corporation (Electro-Motive Division), La Grange, Illinois 60525.
- Item 2: The Equipment shall be settled for in not more than 10 Groups of units delivered to and accepted by the Vendee unless a greater number shall be agreed to by the parties hereto.
- Item 3: The Builder warrants that the Equipment manufactured by it hereunder is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of such Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this warranty. The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder. The Builder further agrees with the Vendee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Vendee of any of its rights under this Item 3.

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

Item 4: The Builder shall defend any suit or proceeding brought against the Vendee, the Lessee and/or each assignee of the Builder's rights under this Agreement so far as the same is based on a claim that the Equipment of the Builder's specification, or any part thereof, furnished under this Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at the Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Vendee, the Lessee and/or any such assignee.

In case any unit of such Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such unit or part is enjoined, the Builder shall at its option and at its own expense either procure for the Vendee, the Lessee and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid CSA Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Vendee.

The Builder will assume no liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

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

Item 5: The Maximum Purchase Price referred to in Article 4 of this Agreement is \$39,888,245.

Item 6: The Maximum CSA Indebtedness referred to in Article 4 of this Agreement is \$27,500,000.

Annex B
to
Conditional Sale Agreement

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Identification Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. Model GP40--2 diesel-electric locomotive	8091	La Grange, Illinois	33	CR 3313-3345	\$541,710	\$17,876,430	May-June 1978 at McCook, Illinois
2,000 h.p. Model GP38--2 diesel-electric locomotive	8090	La Grange, Illinois	21	CR 8181-8201	\$502,765	\$10,558,065	May-June 1978 at McCook, Illinois
2,000 h.p. Model GP38--2 diesel-electric locomotive	8090	La Grange, Illinois	22	CR 8202-8223	\$520,625	\$11,453,750	July-September 1978 at McCook, Illinois
						<u>\$39,888,245</u>	

Interstate Commerce Commission
Washington, D.C. 20423

5/3/78

OFFICE OF THE SECRETARY

Laurance V. Goodrich
Cravath, Swaine & Moore
One Chase Manhattan Plaza
New York, N.Y. 10005

Dear

Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on

at

5/3/78

10:25am

and assigned recordation number(s)

9362, 9362-A, 9362-B & 9362-C