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INDUSTRIAL COMMERCIAL BANK

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CONDITIONAL SALE AND  
RECONSTRUCTION AGREEMENT

among

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY,

Builder,

THE BANK OF NEW YORK,

Owner,

and

LA SALLE NATIONAL BANK,

as Agent

Dated as of March 1, 1979

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## CONDITIONAL SALE AND RECONSTRUCTION AGREEMENT

CONDITIONAL SALE AND RECONSTRUCTION AGREEMENT dated as of March 1, 1979 among ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a Missouri corporation (referred to herein as the "Builder" or, in certain other capacities, as the "Seller" or the "Lessee"), THE BANK OF NEW YORK, a New York banking corporation (hereinafter called the "Owner"), and LA SALLE NATIONAL BANK, a national banking association, not in its individual capacity but solely as agent (hereinafter called the "Agent") under the Participation Agreement referred to below.

### RECITALS

A. Pursuant to this Agreement, the Builder will sell to the Owner the New Equipment (this and certain other capitalized terms used in this Agreement having the meanings set forth in section 1), reserving a security interest therein, and will assign such security interest to the Agent to be held by the Agent to secure the Conditional Sale Indebtedness and all other amounts payable to the Agent pursuant to this Agreement and the Participation Agreement.

B. The Owner will acquire the Hulks from the Seller pursuant to the Hulk Purchase Agreement and will subject the Hulks to a security interest in favor of the Agent pursuant to the Transfer Agreement for the purpose of causing the Hulks to be reconstructed.

C. Pursuant to this Agreement, the Builder will reconstruct the Hulks into Reconstructed Equipment for the account of the Agent, and the Agent, upon completion of such reconstruction, will sell its right, title and interest in and to the Reconstructed Equipment to the Owner, with the Agent reserving a security interest in the Reconstructed Equipment to secure the Conditional Sale Indebtedness and all other amounts payable to the Agent pursuant to this Agreement and the Participation Agreement.

D. The Owner, pursuant to this Agreement, will purchase from the Builder the New Equipment and will purchase from the Agent the interest of the Agent in the Reconstructed

Equipment, and the Owner will lease, subject to this Agreement, the Equipment to the Lessee pursuant to the Lease and will assign its rights in the Lease to the Agent pursuant to the Lease Assignment to secure the Conditional Sale Indebtedness and all other amounts payable to the Agent pursuant to this Agreement and the Participation Agreement.

E. The rights acquired by the Agent pursuant to this Agreement shall be and are acquired for the benefit of the Lender, for whom the Agent is acting pursuant to the terms of the Participation Agreement.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

#### SECTION 1. DEFINITIONS.

For all purposes of this Agreement, the following terms shall have the following meanings:

Agent's Available Funds: the funds held by the Agent which, pursuant to section 2.4 of the Participation Agreement, may be applied to the payment of amounts equal to the Conditional Sale Indebtedness in respect of units of the Equipment being delivered to the Owner at an Equipment Closing.

Business Day: any day other than a Saturday, a Sunday or any other day on which banking institutions in Illinois, Missouri or New York are required or authorized by law to be closed.

Casualty Occurrence: as defined in section 9.2(a).

Certificate of Acceptance: a certificate delivered, pursuant to section 4.2, by the Owner or a representative thereof (who may be an employee of the Lessee) upon delivery by the Builder of units of the New Equipment or the Reconstructed Equipment, as the case may be, to the Owner, certifying that such units have been inspected and accepted on behalf of the Owner and have been marked in accordance with the provisions of section 11.

Conditional Sale Indebtedness: in the aggregate, the amount of the indebtedness of the Owner to the Agent under sections 5.1(a) and 5.2(a).

Cut-off Date: the earliest of (a) the date of the Equipment Closing with respect to the 165th unit of the Equipment, (b) the date of a Declaration of Default pursuant to section 17 and (c) November 30, 1979.

Declaration of Default: as defined in section 17.

Default: any event or condition which after the giving of notice or the lapse of time or both would become an Event of Default.

Down Payment: the amounts payable at Equipment Closings by the Owner to the Agent under sections 5.1(b) and 5.2(b).

Equipment: collectively, the New Equipment and the Reconstructed Equipment, and any additions, modifications or improvements thereto as provided in section 7.1, such term to include, for the purposes of sections 8, 11, 12, 13, 14, 15 and 19, any of the Hulks from which units of the Reconstructed Equipment are to be reconstructed.

Equipment Closing: as defined in section 4.1.

Event of Default: as defined in section 17.

Hulk Purchase Agreement: the Hulk Purchase Agreement, dated as of the date hereof, between the Seller and the Owner, providing for the purchase by the Owner of the Hulks from the Seller, in substantially the form of Exhibit E to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Hulk Purchase Price: the price payable by the Owner for each Hulk purchased from the Seller pursuant to the Hulk Purchase Agreement.

Hulks: collectively, the 40 used and unreconstructed racks for the transportation of automobiles and other equipment on railroad rolling stock which are the subject of the Hulk Purchase Agreement.

Invoiced Purchase Price: (a) with respect to each unit of the New Equipment, the Purchase Price of such unit as set forth in the invoice delivered with respect to such unit pursuant to section 6.2(a)(iii) and (b) with respect to each unit of the Reconstructed Equipment, the Hulk Purchase Price of the unit of the Hulks relating to such unit as set forth in the invoice with respect to such unit of the Hulks delivered pursuant to section 3(b) of the Hulk Purchase Agreement plus the Reconstruction Cost for such unit of the Reconstructed Equipment as set forth in the invoice delivered with respect to such unit pursuant to section 6.2(a)(iv), in each case as approved by the Owner, provided that the aggregate Invoiced Purchase Price of the units of the New Equipment and of the Reconstructed Equipment delivered at all Equipment Closings shall not exceed, respectively, \$4,125,000 and \$888,800 and provided further that the Invoiced Purchase Price of any unit of the Equipment delivered at any Equipment Closing shall not vary by more than 20% from the Purchase Price of such unit as estimated in Schedule I or Schedule II to this Agreement, as the case may be.

Lease: the Equipment Lease relating to the Equipment, dated as of the date hereof, between the Owner and the Lessee, in substantially the form of Exhibit C to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Lease Assignment: the Assignment of Lease and Agreement, dated as of the date hereof, granting to the Agent a security interest in all the Owner's right, title and interest in, to and under the Lease, in substantially the form of Exhibit D to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

Lease Default: any event or condition which after the giving of notice or the lapse of time or both would become a Lease Event of Default.

Lease Event of Default: any of the events or conditions defined as "Events of Default" in section 17.1 of the Lease.

Lender: Teachers Insurance and Annuity Association of America, a New York corporation, and its successors and assigns.

Lenders: the Lender and any transferee (or subsequent transferee) of all or any part of the Lender's interest in the Conditional Sale Indebtedness.

Lien: any mortgage, pledge, lien, charge, encumbrance, retention of title, security interest or claim.

Lessee: the Builder, in its capacity as lessee under the Lease, and its successors and, to the extent permitted by the Lease, assigns.

New Equipment: collectively, the 125 new tri-level enclosed racks, constructed by the Builder and bearing the serial numbers set forth in Schedule I to this Agreement, for the transportation of automobiles and other equipment on railroad rolling stock.

Officers' Certificate: a certificate signed by the Chairman of the Board or the President or any Vice President and by any other Vice President or the Treasurer or any Assistant Treasurer or the Secretary or any Assistant Secretary of the party delivering such certificate, provided that, in the case of a certificate being delivered by the Lessee, at least one of the signatories shall be the President, the Vice President-Finance or the Treasurer.

Participation Agreement: the Participation Agreement, dated as of the date hereof, among the Owner, the Agent, St. Louis-San Francisco Railway Company and the Lender, as from time to time amended, modified or supplemented in accordance with its terms.

Purchase Price: (a) with respect to each unit of the New Equipment, the actual cost to the Builder of constructing such unit, including a reasonable overhead factor (an estimate of such cost being set forth in Schedule I to this Agreement), and (b) with respect to each unit of the Reconstructed Equipment, the Hulk Purchase Price for such unit (as set forth in Schedule II to this Agreement) plus the Reconstruction Cost for such unit (an estimate of such Reconstruction Cost being set forth in Schedule II to this Agreement).

Reconstructed Equipment: collectively, the Hulks as reconstructed by the Builder pursuant to this Agreement and bearing the serial numbers set forth in Schedule II hereto.

Reconstruction Cost: with respect to any unit of Reconstructed Equipment, the actual cost to the Builder of reconstructing the Hulk relating to such unit into such unit pursuant to this Agreement, including a reasonable overhead factor.

Seller: the Builder, in its capacity as seller under the Hulk Purchase Agreement, and its successors and assigns.

Transfer Agreement: the Transfer Agreement, dated as of the date hereof, between the Owner and the Agent pursuant to which the Owner grants to the Agent a security interest in the Hulks purchased pursuant to the Hulk Purchase Agreement, substantially in the form of Exhibit F to the Participation Agreement and as from time to time amended, modified or supplemented in accordance with its terms.

## SECTION 2. SALE OF NEW EQUIPMENT; RETENTION AND ASSIGNMENT OF SECURITY INTEREST THEREIN.

2.1 Sale of New Equipment by Builder. Pursuant to this Agreement, the Builder shall construct and shall sell and deliver to the Owner and the Owner shall purchase from the Builder and (as provided in section 5.1) pay for the New Equipment, each unit of which shall conform to the specifications referred to in Schedule I to this Agreement (with such modifications as may be agreed to in writing by the Builder, the Owner and the Agent). The Builder warrants to the Owner and the Agent that the design, quality and component parts of each unit of the New Equipment will conform, on the date of delivery of such unit to the Owner, to all regulatory requirements and specifications, if any, reasonably interpreted as being applicable to equipment of the character of such unit of the New Equipment.

2.2 Retention by Builder of Security Interest in New Equipment. The Builder shall and does hereby retain a security interest in the New Equipment to secure the payment of the Conditional Sale Indebtedness and all other indebtedness and amounts payable by the Owner pursuant to this Agreement and the Participation Agreement, and the performance by the Owner of all of its obligations and agreements contained in this Agreement and the Participation Agreement, notwithstanding the provisions of section 20.2 limiting the liability of the Owner and notwithstanding the delivery of the New Equipment to, and

the possession and use of the New Equipment by, the Owner and the Lessee as provided in this Agreement and the Lease.

2.3 Assignment of Builder's Interest in New Equipment to Agent. The Builder hereby assigns, conveys, transfers and sets over unto the Agent:

(a) all the right, title and interest of the Builder in and to each unit of the New Equipment when and as delivered to and accepted by the Owner, subject to payment by the Agent of the amounts required to be paid to the Builder under section 5.3; and

(b) all the right, title and interest of the Builder in and to this Agreement, including, without limitation, (i) the right to receive payment of any amounts payable by the Owner with respect to the Purchase Price of the New Equipment, any interest thereon and any other amounts payable by the Owner under this Agreement, and (ii) the rights, powers, privileges and remedies of the Builder under this Agreement;

provided that the assignment provided for in subdivisions (a) and (b) of this section 2.3 shall be subject to the terms and conditions with respect to such assignment contained in section 21.

### SECTION 3. RECONSTRUCTION AND SALE OF RECONSTRUCTED EQUIPMENT; RETENTION OF SECURITY INTEREST.

3.1 Reconstruction and Sale. Pursuant to this Agreement, the Builder will accept delivery of the Hulks from the Owner immediately upon the delivery of the Hulks to the Owner under the Hulk Purchase Agreement, will reconstruct the Hulks into the Reconstructed Equipment as described in Schedule II to this Agreement and will deliver the Reconstructed Equipment to the Owner on behalf of the Agent, and the Owner will accept delivery of and pay (as provided in section 5.2 and in the Hulk Purchase Agreement) for the Reconstructed Equipment. Each unit of the Reconstructed Equipment shall conform to the specifications referred to in Schedule II to this Agreement (with such modifications as may be agreed to in writing by the Builder, the Owner and the Agent). The Builder warrants to the Owner and the Agent that the design, quality and component parts of each unit of the Reconstructed Equipment will conform, on the date of delivery of such unit to the Owner, to all regulatory requirements and specifications, if any, reasonably interpreted as being applicable to equipment of the character of such unit of the Reconstructed Equipment.

3.2 Retention by Agent of Security Interest in Hulks and Reconstructed Equipment. The Agent shall and does hereby retain a security interest in the Hulks delivered to the Builder hereunder for reconstruction (and shall continue to retain such security interest during the entire period that the Hulks are being reconstructed) and in the Reconstructed Equipment to secure the payment of the Conditional Sale Indebtedness and all other indebtedness and amounts payable by the Owner pursuant to this Agreement and the Participation Agreement, and the performance by the Owner of all of its obligations and agreements contained in this Agreement and the Participation Agreement, notwithstanding the provisions of section 20.2 limiting the liability of the Owner and notwithstanding the delivery of the Reconstructed Equipment to, and the possession and use of the Reconstructed Equipment by, the Owner and the Lessee as provided in this Agreement and the Lease.

SECTION 4. EQUIPMENT CLOSINGS; INSPECTION;  
HULK RECONSTRUCTION.

4.1 Equipment Closings. (a) The Builder shall aggregate the units of the New Equipment and the Reconstructed Equipment into no more than 10 groups of units of the Equipment, and the purchase and sale of each such group shall take place at a closing (an "Equipment Closing") to be held on the date set forth in the notice relating to such group delivered pursuant to section 6.1, provided that an Equipment Closing may not be held under this Agreement (i) prior to the first Funding Date (as determined pursuant to section 2.3 of the Participation Agreement), (ii) after November 30, 1979 or (iii) if the Builder shall have received written notice from the Owner or the Agent that a Default or an Event of Default shall have occurred or that any of the conditions contained in section 4 of the Participation Agreement shall not have been satisfied (or waived) at the time therein provided. Schedule III hereto contains an estimated schedule of the Equipment Closings.

(b) Unless otherwise agreed by the parties hereto, all documents and instruments required to be delivered at any Equipment Closing shall be delivered at the offices of Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, New York, New York 10017, all funds required to be made available at any Equipment Closing shall be made available at the offices of La Salle National Bank, 135 South La Salle Street, Chicago, Illinois 60690, Attention: Roland K. Weber, Vice

President, and the Equipment to be delivered at any Equipment Closing shall be delivered (with freight charges, if any, prepaid by the Builder) at the place or places within the United States of America set forth in Schedule III to this Agreement.

(c) The Builder shall not be in default under this Agreement, nor shall the Builder have any liability in damages or for specific performance for the failure to make deliveries 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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors, provided that in no event may units of the Equipment be delivered after November 30, 1979 by reason of this section 4.1(c).

4.2 Inspection; Certificate of Acceptance. During the construction of any unit of the New Equipment or the reconstruction of any unit of the Reconstructed Equipment, such unit of the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner (who may be employees of the Lessee) and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the Equipment in accordance with the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of Equipment, such unit or units shall be presented to an inspector of the Owner for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Owner (who may be an employee of the Lessee) shall execute and deliver to the Builder, at the Equipment Closing with respect to such unit or units, a Certificate of Acceptance with respect to such unit or units, provided that the Builder shall not thereby be relieved of its warranties set forth or referred to in this Agreement.

4.3 Hulk Reconstruction. The Builder shall not commence reconstruction\* of any Hulk if the Builder (a) receives the notice referred to in clause (iii) of the proviso to the first sentence of section 4.1(a), (b) does not reasonably anticipate that such Hulk will be fully

reconstructed within 90 days following commencement of reconstruction and in any case prior to November 30, 1979 or (c) shall have received written notice from the Owner or the Agent prior to commencement of reconstruction that the Owner is no longer obligated under the terms of the Hulk Purchase Agreement to accept delivery and pay for any additional Hulks. Any Hulk not reconstructed by November 30, 1979 shall be subject to the terms of the Lease as provided in section 4 of the Lease.

SECTION 5. CONDITIONAL SALE INDEBTEDNESS; PAYMENT OF PURCHASE PRICE.

5.1 Conditional Sale Indebtedness With Respect to New Equipment. The Owner hereby acknowledges itself to be indebted to the Agent for, and hereby promises to pay to the Agent, in immediately available funds at such place as the Agent may designate, the Invoiced Purchase Price for the group of units of the New Equipment being delivered to the Owner at an Equipment Closing as follows:

(a) in 24 semiannual installments, in the manner and at the times provided in section 5.4, an amount (which amount shall constitute "Conditional Sale Indebtedness") equal to the lesser of (i) 69.600975% of the aggregate of the Invoiced Purchase Price of the units of the New Equipment in such group and (ii) Agent's Available Funds; and

(b) on the date of such Equipment Closing, an amount (which amount shall constitute a "Down Payment") equal to the aggregate of the Invoiced Purchase Price of the units of the New Equipment in such group, less the amount payable under section 5.1(a), provided that the Owner shall not be required to make such payment unless there shall have been delivered to the Agent and the Owner on or prior to such date the documents required to be delivered pursuant to section 6.

5.2 Conditional Sale Indebtedness With Respect to Reconstructed Equipment. The Owner hereby acknowledges itself to be indebted to the Agent for, and hereby promises to pay to the Agent, in immediately available funds at such place as the Agent may designate, an amount equal to the Reconstruction Cost for the group of units of the Reconstructed Equipment being delivered to the Owner at an Equipment Closing as follows:

(a) in 20 semiannual installments, in the manner and at the times provided in section 5.4, an amount (which

amount shall constitute "Conditional Sale Indebtedness") equal to the lesser of (i) 72.085344% of the Invoiced Purchase Price of the units of the Reconstructed Equipment in such group and (ii) Agent's Available Funds; and

(b) on the date of such Equipment Closing, an amount (which amount shall constitute a "Down Payment") equal to the aggregate of the Invoiced Purchase Price of the units of the Reconstructed Equipment in such group, less the sum of (i) the Hulk Purchase Price for the units of the Hulks relating to such units of the Reconstructed Equipment and (ii) the amount payable under section 5.2(a), provided that the Owner shall not be required to make such payment unless there shall have been delivered to the Agent and the Owner on or prior to such date the documents required to be delivered pursuant to section 6.

5.3 Payment to Builder. Subject to the conditions set forth in section 6 of this Agreement, the Agent shall pay to the Builder at an Equipment Closing, in immediately available funds, (a) an amount equal to the Conditional Sale Indebtedness with respect to the group of units of the Equipment being delivered at such Equipment Closing from Agent's Available Funds and (b) the Owner's Down Payment with respect to such units.

5.4 Payment of Conditional Sale Indebtedness. An installment of Conditional Sale Indebtedness shall be payable on the date of the sixth calendar month after the Cut-off Date corresponding with the Cut-off Date and on the same date of each sixth calendar month thereafter (or if any such month does not have a corresponding date, then the date of the last day of such month) until all such payments in respect of the New Equipment or the Reconstructed Equipment, as the case may be, shall have been made (each such date being referred to herein as a "Payment Date"). If any Payment Date falls on a day that is not a Business Day, then the payment due on such Payment Date shall be made on the next succeeding Business Day. The unpaid balance of any Conditional Sale Indebtedness shall bear interest from the date of the Equipment Closing upon which any such Conditional Sale Indebtedness was incurred at the rate of 9.5% per annum, and such interest shall be payable, to the extent accrued, on the Cut-off Date and thereafter on each Payment Date. The installments of principal payable on each Payment Date shall be calculated on such a basis that the amount and allocation of principal and interest on such

Payment Date shall be, in the case of Conditional Sale Indebtedness relating to any units of the New Equipment, as set forth in Schedule IV to this Agreement and, in the case of Conditional Sale Indebtedness relating to any units of the Reconstructed Equipment, as set forth in Schedule V to this Agreement. Promptly following the Cut-off Date, the Owner will furnish to the Agent and the Lessee a payment schedule or schedules 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, except that, for the purpose of determining the amount payable pursuant to the third sentence of the preceding paragraph with respect to the period from the date of an Equipment Closing to the Cut-off Date, interest shall be computed on an actual elapsed day basis for a 360-day year.

The Owner will pay on demand interest at the rate of 10.5% per annum, to the extent permitted by applicable law, upon all amounts of principal and interest remaining unpaid after the same shall have become due and payable pursuant to the terms hereof.

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. The Owner shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due, provided that the Conditional Sale Indebtedness may be prepaid as provided in section 9.2.

#### SECTION 6. NOTICE OF AND CONDITIONS TO EQUIPMENT CLOSINGS.

6.1 Notice of Equipment Closings. The Builder shall give written notice to the Owner, the Agent and the Lender, specifying the date of any Equipment Closing, which notice shall be given at least 10 Business Days prior to the date so specified and shall set forth (a) the serial number of each unit of the Equipment to be delivered at such Equipment Closing and the serial number of the unit of railroad rolling stock to which such unit of the Equipment is attached, the proposed Invoiced Purchase Price for each such unit of the Equipment, whether each such unit is New Equipment or Reconstructed Equipment and, with respect to each such unit of the Reconstructed

Equipment, the amount of the proposed Invoiced Purchase Price for such unit allocable to the Hulk Purchase Price and the amount allocable to the Reconstruction Cost, (b) the respective aggregate proposed Invoiced Purchase Price of all units of the New Equipment and of all units of the Reconstructed Equipment to be delivered at such Equipment Closing and (c) the amount of such proposed Invoiced Purchase Price with respect to the units of the New Equipment and the units of the Reconstructed Equipment, respectively, to be satisfied by the Down Payment and the amount to be satisfied out of Agent's Available Funds.

6.2 Conditions to Equipment Closings. The obligation of the Agent to make the payment referred to in section 5.3 at an Equipment Closing shall be subject to:

(a) the receipt by the Agent and (except for the Officers' Certificate referred to in paragraph (vii) of this section 6.2(a)) the Owner on or prior to the date of such Equipment Closing of the following documents and instruments in form and substance satisfactory to the Agent, the Lender, special counsel to the Lender and (except for the Officers' Certificate referred to in paragraph (vii) of this section 6.2(a)) the Owner and counsel for the Owner:

(i) a bill or bills of sale, dated the date of such Equipment Closing, from the Builder to the Owner, transferring to the Owner title to the units of the New Equipment being delivered at such Equipment Closing, warranting to the Owner that at the time of such delivery the Builder has good and lawful right to sell such units and has conveyed to the Owner legal title to such units free of all Liens (other than those created by this Agreement and the Lease), and covenanting to defend the title of the Owner to such units against the claims and demands of all persons based on claims originating prior to the delivery of such units by the Builder to the Owner under this Agreement;

(ii) the Certificate or Certificates of Acceptance, dated the date of such Equipment Closing, as contemplated by section 4.2 of this Agreement and section 2.1 of the Lease with respect to such units of the Equipment;

(iii) an invoice, dated the date of such Equipment Closing and addressed to the Agent and the Owner, from the Builder for the units of the New Equipment, if any, being delivered at such Equipment Closing,

containing a certification by the Builder that the Invoiced Purchase Price for such units of the New Equipment is true and correct and containing an opinion by the Builder that such Invoiced Purchase Price has been determined in accordance with the definition of Purchase Price appearing in section 1 of this Agreement and that the amount of such Invoiced Purchase Price does not exceed the amount the Owner would have been required to pay for such units if such units had been purchased from an independent builder;

(iv) an invoice, dated the date of such Equipment Closing and addressed to the Agent and the Owner, from the Builder for the Reconstruction Cost for the units of the Reconstructed Equipment, if any, being delivered at such Equipment Closing, containing a certification by the Builder that the Reconstruction Cost for such units of the Reconstructed Equipment is true and correct and containing an opinion by the Builder that such Reconstruction Cost has been determined in accordance with the definition of Reconstruction Cost appearing in section 1 of this Agreement and that the amount of such Reconstruction Cost does not exceed the amount the Owner would have been required to pay if such units had been reconstructed by an independent builder;

(v) a favorable opinion of Messrs. Cravath, Swaine & Moore, counsel for the Builder, dated as of the date of such Equipment Closing, stating that at the time of delivery of the units of the Equipment being delivered at such Equipment Closing, title to such units is vested in the Owner free of all Liens, except for the interest of the Agent in such units under this Agreement and the Transfer Agreement and the interest of the Lessee under the Lease;

(vi) an Officers' Certificate of the Lessee, dated the date of such Equipment Closing, stating that no Lease Default or Lease Event of Default has occurred and is continuing as of such date; and

(vii) an Officers' Certificate of the Owner, dated the date of such Equipment Closing, stating (x) that no Default or Event of Default has occurred and is continuing as of such date (except that, with respect to a Default or an Event of Default covered by section 17.1(a), the Owner may make such statement to the best of its knowledge) and (y) that no Liens of the type referred to in section 7(g) of the Participation Agreement have arisen with respect to any unit of the Equipment; and

(b) the Owner's (i) having paid the Hulk Purchase Price with respect to the units of the Hulks relating to the units of the Reconstructed Equipment, if any, being delivered at such Equipment Closing and (ii) having made the Down Payment required by section 5.1(b) or section 5.2(b), as the case may be, provided that, if on the date scheduled for any Equipment Closing pursuant to section 6.1, the amount of the Down Payment under section 5.1(b) would exceed 30.4% of the Invoiced Purchase Price for the units of the New Equipment to be delivered at such Equipment Closing, or the amount of the Down Payment plus the related Hulk Purchase Price under section 5.2(b) would exceed 27.915% of the Invoiced Purchase Price for the units of the Reconstructed Equipment to be delivered at such Equipment Closing, as the case may be, the Owner shall, by written notice to the Agent and the Builder, postpone the date of such Equipment Closing to the next scheduled Funding Date as determined pursuant to section 2.3 of the Participation Agreement.

SECTION 7. CONCERNING THE AGENT'S SECURITY INTEREST IN THE HULKS AND THE EQUIPMENT.

7.1 Security Interest in Accessions. Any and all additions, modifications and improvements to the Hulks and the Equipment, and any and all parts installed on and additions and replacements made to any unit of the Hulks prior to its delivery and acceptance hereunder, and any and all replacements of the Equipment and of parts thereof and additions thereto, shall constitute accessions thereto and shall be subject to the Agent's security interest under this Agreement and the Transfer Agreement and to all the terms and conditions of this Agreement, except for any additions, modifications and improvements which, under the provisions of section 12.2 of the Lease, are owned by the Lessee.

7.2 Release of Security Interest in Equipment. When and (except as provided in the next sentence and in sections 7.3 and 9.2) only when the Agent shall have received the full Conditional Sale Indebtedness relating to the Reconstructed Equipment, together with interest thereon as provided in this Agreement, and an Officers' Certificate of the Owner stating that no Default or Event of Default has occurred and is continuing and an Officers' Certificate of the Lessee stating that no Lease Default or Lease Event of Default has occurred and is continuing, the Agent shall, at the Owner's expense, release its security interest in the

Reconstructed Equipment by (a) executing and delivering to the Owner a bill or bills of sale for the Reconstructed Equipment, releasing its security interest therein to the Owner free of all Liens created by or contained in this Agreement, (b) executing and delivering to the Owner, 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 release of the Agent's security interest in the Reconstructed Equipment, and (c) paying to the Owner any money paid to the Agent pursuant to section 9.2 with respect to Casualty Occurrences relating to Reconstructed Equipment and not theretofore applied as therein provided. When and (except as provided in the preceding sentence and in sections 7.3 and 9.2) only when the Agent shall have received the full Conditional Sale Indebtedness, together with interest and all other indebtedness and payments as provided in this Agreement and the Participation Agreement, and all the Owner's obligations contained in this Agreement and the Participation Agreement shall have been performed, the Agent's security interest in the balance of the Equipment then subject to such security interest shall be released without further transfer or action on the part of the Agent, provided that the Agent, if so requested by the Owner at that time, will at the Owner's expense (a) execute and deliver to the Owner a bill or bills of sale for such Equipment releasing its security interest therein to the Owner free of all Liens created by or retained in this Agreement, (b) execute and deliver to the Owner, 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 release of the Agent's security interest in such Equipment and (c) pay to the Owner any money paid to the Agent pursuant to section 9.2 and not theretofore applied as therein provided. The Owner 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 any such bill or bills of sale or instrument or instruments or to file any such certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner.

7.3 Release of Security Interest in Unreconstructed Hulks. If, pursuant to section 4 of the Lease, any unit of the Hulks not reconstructed pursuant to this Agreement becomes subject to the Lease or is sold by the Lessee for the account of the Owner, the Agent shall, upon request by the Owner and at the Owner's expense, (a) execute and deliver to the Owner a bill of sale for such unit releasing its security interest therein free of all Liens created by or retained in this Agreement and the Transfer Agreement and (b) execute and deliver to the Owner for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the release of the Agent's security interest in the Equipment.

#### SECTION 8. TAXES.

All payments to be made by the Owner hereunder will be free of expense to the Agent and the Lenders for collection or other charges and will be free of expense to the Agent and the Lenders with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipts taxes in the nature of or in lieu of sale, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, documentary stamp taxes, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being referred to herein as "Impositions") now or 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 or any interest in the Equipment under the terms hereof, all of which Impositions the Owner assumes and agrees to pay on demand in addition to the Conditional Sale Indebtedness and all other amounts payable by the Owner under this Agreement. The Owner will also pay promptly all Impositions which may be imposed upon the Equipment or any unit thereof delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Agent or the Lenders solely by reason of the Owner's ownership thereof or the Agent's security interest therein 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 security interest of the

Agent or result in a Lien upon all or any part of the Equipment, provided that the Owner shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith (after written notice to the Agent) and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent or the Lenders in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Agent or the Lenders directly and paid by the Agent or the Lenders, the Owner shall reimburse the Agent or the Lenders, as the case may be, upon presentation of an invoice therefor, and any amounts so paid by the Agent or the Lenders shall be secured by and under this Agreement. All amounts paid by the Owner pursuant to this section 8 shall be grossed-up, so that the person to whom or for whose benefit the payment is made shall receive an amount which, net of any Impositions or other charges required to be paid by such person in respect thereof, shall be equal to the amount of payment otherwise required hereunder.

#### SECTION 9. MAINTENANCE OF EQUIPMENT; CASUALTY OCCURRENCES.

9.1 Maintenance and Repair. The Owner agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good operating order, repair and condition.

9.2 Casualty Occurrences. (a) In the event that any unit of the Equipment shall be or become lost, stolen, destroyed or, in the good faith opinion of the Owner or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a period which shall exceed the then remaining term of the Lease with respect to such unit or by any other governmental entity resulting in loss of possession by the Lessee for a period of at least 90 consecutive days or until the end of the term of the Lease with respect to such unit (each such occurrence being referred to herein as a "Casualty Occurrence"), the Owner shall promptly cause the Agent to be fully informed in regard thereto. Notwithstanding any such Casualty Occurrence, the Owner shall continue making payment of all installments of principal and interest in respect of such unit until the date for the payment of

interest on the Conditional Sale Indebtedness (referred to herein as a "Casualty Payment Date") next succeeding the date on which such notice is given. On such Casualty Payment Date the Owner shall, subject to the provisions of section 20.2, pay to the Agent a sum equal to the Casualty Value (as hereinafter defined) of such unit suffering a Casualty Occurrence, such Casualty Value to be determined as of such Casualty Payment Date, and shall file, or cause to be filed, with the Agent a certificate setting forth the Casualty Value of such unit. Any money paid to the Agent pursuant to this section 9.2 shall be applied on such Casualty Payment Date (after the payment of the interest and principal due on the Conditional Sale Indebtedness on such Casualty Payment Date) to prepay without penalty or premium the unpaid balance of the Conditional Sale Indebtedness with respect to such unit, and the Owner will promptly furnish to the Agent and the Lessee a revised schedule of payments of principal and interest thereafter to be made in respect of the remaining units of the New Equipment or the Reconstructed Equipment, as the case may be, in such number of counterparts as the Agent may request.

(b) Upon payment by the Owner to the Agent of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, the Agent's security interest in such unit shall be released without further transfer or action on the part of the Agent, except that the Agent, if requested by the Owner, will execute and deliver to the Owner, at the expense of the Owner, an appropriate instrument confirming such release, in recordable form, in order that the Owner may make clear upon the public records the release of the Agent's security interest in such unit, provided that in the event of a Casualty Occurrence with respect to the last unit of the Equipment still subject to this Agreement, the Agent's security interest in such unit shall not be released unless the conditions of section 7.2 shall be met.

(c) The "Casualty Value" of each unit of the New Equipment or the Reconstructed Equipment, as the case may be, suffering a Casualty Occurrence shall be deemed to be the amount of the original Conditional Sale Indebtedness with respect to such unit remaining unpaid on the date as of which such Casualty Value shall be determined, plus interest, if any, accrued thereon but unpaid as of such date. For the purpose of this subdivision (c), each payment of Conditional Sale Indebtedness in respect of the

New Equipment or the Reconstructed Equipment made pursuant to this Agreement (other than a payment made in connection with a Casualty Occurrence) shall be deemed to be a payment on each unit of the New Equipment or the Reconstructed Equipment, as the case may be, in like proportion as the original Invoiced Purchase Price of such unit bears to the aggregate original Invoiced Purchase Price of all the units of the New Equipment or the Reconstructed Equipment, as the case may be, subject to the Agent's security interest at the time such payment of Conditional Sale Indebtedness was made.

(d) The Agent shall be entitled to receive any insurance proceeds or condemnation payments in respect of any unit of the Equipment and shall, if no Default or Event of Default shall have occurred and be continuing, pay such insurance proceeds or condemnation payments to the Owner (i) in the case of any such insurance proceeds or condemnation payments received in respect of any unit of the Equipment suffering a Casualty Occurrence, upon receiving payment of the Casualty Value hereunder for such unit and (ii) in the case of any such insurance proceeds or condemnation payments received in respect of any unit of the Equipment not suffering a Casualty Occurrence, upon proof satisfactory to the Agent that any damage to such unit in respect of which such insurance proceeds were paid has been fully repaired or that any unit in respect of which such condemnation payments were made has been returned to the full possession of the Owner or the Lessee. If a Default or Event of Default shall have occurred and be continuing, the Agent shall retain any such insurance proceeds or condemnation payments until either the preceding sentence of this section 9.2(d) becomes applicable or a Declaration of Default is made, and thereafter apply such insurance proceeds or condemnation payments as set forth in the preceding sentence of this section 9.2(d) or in section 19(g).

#### SECTION 10. REPORTS AND INSPECTIONS.

On or before March 31 in each year, commencing with the calendar year 1980, the Owner shall furnish or cause to be furnished to the Agent an accurate statement setting forth as of the preceding December 31 the amount, description and numbers of the units of the Equipment (a) then covered hereby, (b) that have suffered a Casualty

Occurrence during the preceding 12 months (or since the date of this Agreement in the case of the first such statement) and (c) then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs and setting forth the serial numbers of the units of rolling stock to which the units of the Equipment then covered hereby are attached and such other information regarding the condition and state of repair of the Equipment as the Agent may reasonably request and stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, markings required by section 11 have been preserved or replaced. The Agent shall have the right, by its agents, to inspect the Equipment and the Lessee's records with respect thereto at such reasonable times as the Agent may request during the continuance of this Agreement.

#### SECTION 11. MARKING OF EQUIPMENT.

(a) The Owner will cause each unit of the Equipment to be kept numbered with its serial number as set forth in Schedule I or II to this Agreement, as the case may be, or, in the case of Equipment not there listed, such serial number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit of the Equipment, in letters not less than one inch in height, the following legend: "This Rack Owned by The Bank of New York Subject to a Security Interest in Favor of La Salle National Bank, as Agent", or other appropriate words designated by the Agent (including any assignee of the Agent pursuant to section 16.2), with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Agent's security interest in the Equipment and its rights under this Agreement. The Owner will not knowingly permit any such unit to be placed in operation or exercise any control over the same until such legend shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such legend which may be removed, obliterated, defaced or destroyed. The Owner will not knowingly permit the serial number of any unit of the Equipment to be changed except in accordance with a statement of a new number or numbers to be substituted therefor, which statement

previously shall have been filed with the Agent and filed, recorded and deposited by the Owner in all public offices where this Agreement, or any Uniform Commercial Code financing statement or similar instrument relating thereto, shall have been filed, recorded and deposited.

(b) Except as provided in subdivision (a) of this section 11, the Owner 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 that the Owner may allow the Equipment 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 identification of the rights of the Lessee or its affiliates to use the Equipment as permitted under the Lease.

#### SECTION 12. COMPLIANCE WITH LAWS AND RULES.

During the term of this Agreement, the Owner 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 laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend and with rules and regulations of any legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and in the event that any such law, rule or regulation requires any alteration, replacement or modification of or to any unit of the Equipment or any part thereof, the Owner will comply with such law, rule or regulation at its own expense, provided that the Owner may, in good faith and after giving written notice to the Agent, contest the validity or application of any such law, rule or regulation in any reasonable manner which does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent or the Lender in or to the Equipment and otherwise under this Agreement.

#### SECTION 13. POSSESSION AND USE.

(a) The Owner, so long as an Event of Default shall not have occurred and be continuing, shall be entitled, from and after delivery of the Equipment to the Owner, to

the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement and the Lease.

(b) The parties hereto acknowledge that the Owner simultaneously herewith is leasing the Equipment to the Lessee for use as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinate and junior in rank to the rights, and shall be subject to the remedies, of the Agent under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Agent.

(c) A unit of the Equipment may be attached or affixed to a unit of railroad rolling stock only if (i) such unit of railroad rolling stock is owned or leased by Trailer Train Company, (ii) such attachment or affixing does not interfere with the Agent's security interest in such unit or restrict the repossession of such unit, and (iii) such unit may be removed from the railroad rolling stock to which it is attached or affixed within a reasonable amount of time and without materially impairing such railroad rolling stock or the value thereof. The Lessee shall not be permitted to use the Equipment in regular use, or assign the Equipment for regular use, outside of the United States of America.

#### SECTION 14. PROHIBITION AGAINST LIENS.

(a) The Owner will not directly or indirectly create or permit or suffer to be created or to remain, and will pay or discharge any and all sums claimed by any party from, through or under the Owner or its successors or assigns which, if unpaid, might become, a Lien on or with respect to the Equipment, or any unit thereof, or the Owner's interest in the Lease or the payments due and to become due thereunder, or any part thereof, and will promptly discharge any such Lien 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 (after written notice to the Agent) and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent or the Lenders in or to the Equipment or otherwise

under this Agreement or in and to the Lease and the payments due or to become due thereunder. The Agent may, in its discretion, discharge any Liens on or with respect to the Equipment or the Owner's interest in the Lease which have arisen in breach of this section 14, and the Owner shall reimburse the Agent for any amounts paid by the Agent to discharge such Liens, such obligation of the Owner to be secured by and under this Agreement.

(b) The covenant in section 14(a) to discharge Liens will not be deemed breached by reason of the non-discharge 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.

(c) The foregoing provisions of this section 14 shall be subject to the limitations set forth in sections 20.2 and 25, provided that the Owner will pay or discharge or cause to be paid or discharged any and all sums claimed by any party from, through or under the Owner or its successors or assigns, not arising out of the transactions contemplated by this Agreement (but including tax liens arising out of the failure of the Owner to pay net income or franchise taxes) which, if unpaid, might become a Lien on or with respect to the Equipment, or any unit thereof, or the Owner's interest in the Lease and the payments due or to become due thereunder, or any part thereof, but the Owner shall not be required to pay or discharge or cause to be paid or discharged any such claim so long as the validity thereof shall be contested in good faith (after written notice to the Agent) and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the security interest or rights of the Agent or the Lenders in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments due or to become due thereunder. For purposes of this section 14(c), the term "Owner" shall include any affiliated group, within the meaning of section 1504 of the Internal Revenue Code of 1954, as amended, of which the Owner is a member if consolidated returns are filed for such affiliated group for federal income tax purposes.

SECTION 15. INDEMNITIES AND WARRANTIES; RISK OF LOSS.

15.1 Owner's Indemnity. The Owner agrees to indemnify, protect and hold harmless the Agent and the Lenders from and against all losses, damages, injuries, liabilities, suits, 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, or the enforcement of performance (whether or not suit is instituted), of this Agreement, the retention by the Agent of a security interest in the Equipment, the ordering, acquisition, use, operation, maintenance, condition, reconstruction, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, reconstruction, 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 or a security interest in the Equipment remains in the Agent, or the transfer of title to the Equipment by the Agent 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 Conditional Sale Indebtedness, and the release of the security interest in the Equipment, as provided in section 7.2 and 7.3, or the termination of this Agreement in any manner whatsoever.

15.2 Risk of Loss on Owner. The Owner will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

15.3 No Warranties By Agent. THE AGENT MAKES NO WARRANTIES, WHETHER WRITTEN, ORAL, STATUTORY OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE HULKS OR THE EQUIPMENT OR IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY AND SALE OF THE HULKS OR THE EQUIPMENT HEREUNDER.

15.4 Builder's Warranties and Indemnity. (a) The Builder warrants that the Hulks will be reconstructed in accordance with, and the Equipment will conform to, the specifications and standards set forth or referred to in sections 2.1 and 3.1 and warrants that the Equipment will be

free from defects in material or workmanship or design under normal use and service. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, BUT THE BUILDER SHALL NOT BE HEREBY RELIEVED OF ITS OTHER OBLIGATIONS OR LIABILITIES UNDER THIS AGREEMENT. The Builder agrees to and does hereby, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, transfer, assign, set over and deliver to the Agent and, subject to the rights of the Agent under this Agreement, to the Owner, every claim, right and cause of action which the Builder has or hereafter shall have against any party who supplies any design, system, component or part for the Equipment or who performs any of the construction of the New Equipment or who performs any of the reconstruction of the Hulks, and the Builder agrees to execute and deliver to the Agent and the Owner all and every such further assurance as may be reasonably requested more fully to effectuate the assignment, transfer and delivery of every such claim, right and cause of action.

(b) The Builder agrees to indemnify, protect and hold harmless the Agent, the Lenders and the Owner from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent, the Lenders or the Owner (i) because of the use in or about the construction or operation of the Equipment or the reconstruction of the Hulks, or any unit thereof, of any design, article or material infringing or claimed to infringe on any patent or other right or (ii) arising out of any accident or tort in connection with the construction, reconstruction, operation, use, condition, possession or storage by the Builder of any of the Hulks or any unit of the Equipment resulting in damage to property or injury or death to any person. Each of the Agent, any of the Lenders and the Owner will give notice to the Builder of any claim known to it from which liability may be charged against the Builder under this section 15.4(b).

(c) The warranties and indemnities contained or referred to in this section 15.4 and in any other sections of this Agreement and all other covenants and obligations of the Builder contained in this Agreement shall inure to the benefit of, and be enforceable by the Agent, any of the Lenders, the Owner or any lessor, lessee, assignee or transferee of this Agreement or of any units of the Equipment delivered by the Builder hereunder.

SECTION 16. ASSIGNMENTS.

16.1 By the Owner. The Owner will not (a) except as provided in section 13(b), transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its 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 Agent hereunder (including, without limitation, rights and remedies against the Owner) and (ii) is made in accordance with the provisions, including those relating to permitted assignees, set forth in section 16.3 of the Participation Agreement and the assignee expressly assumes, in writing, in form reasonably satisfactory to the Agent, all the obligations of the Owner under this Agreement.

16.2 By the Agent, etc. All or any of the rights, benefits and advantages of the Agent under this Agreement, including the right to receive the payments of principal of and interest on the Conditional Sale Indebtedness and the other payments herein provided to be made by the Owner, may be assigned by the Agent and reassigned by any assignee at any time or from time to time in accordance with section 11.3 of the Participation Agreement. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to reconstruct the Hulks and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities contained or referred to in section 15.4 or relieve the Owner of its obligations to the Builder or diminish the rights of the Owner contained or referred to in this Agreement.

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

SECTION 17. EVENTS OF DEFAULT.

If any one or more of the following events or conditions ("Events of Default") shall occur and be continuing (without regard to any provision of this Agreement, including section 20.2, limiting the liability of the Owner):

- (a) any Lease Event of Default; or
- (b) the Owner shall fail to pay in full any sum payable by the Owner when payment thereof shall be due hereunder and such failure shall continue for more than 10 days thereafter; or
- (c) the Owner shall make 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 Hulks or of the Equipment, or shall permit any Lien to arise with respect to any unit of the Equipment in contravention of the provisions of section 14(c); or
- (d) the Owner shall, for more than 30 days after the Agent 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 Equipment (including the reconstruction of the Hulks) on its part to be kept and performed or to make provision satisfactory to the Agent for such compliance; or
- (e) the Owner shall admit in writing its inability to pay its debts generally as they become due, file a petition in bankruptcy or commence proceedings under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, make an assignment for the benefit of its creditors, consent to the appointment of a receiver of itself or of the whole or any substantial part of its properties, or on a petition in bankruptcy filed against the Owner, be adjudicated a bankrupt, or an order, judgment or decree shall be entered by any court of competent jurisdiction appointing, without the consent of the Owner, a receiver of the Owner or of the whole or any substantial part of its properties, and

such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of such appointment, or a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against the Owner under any bankruptcy, insolvency, reorganization, readjustment of debt, dissolution or liquidation law or statute now or hereafter in effect, and such order, judgment or decree shall not be vacated or set aside or stayed within 60 days from the date of the entry of such order, judgment or decree, or a stay of such proceedings shall be thereafter set aside, or under the provision of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Owner or of the whole or any substantial part of its properties, and such custody or control shall not be terminated within 60 days from the date of assumption of such custody or control; or

(f) any representation or warranty made by the Owner hereunder or under the Participation Agreement or the Lease, or by any officer or representative of the Owner in any document or certificate furnished to the Agent or the Lenders in connection herewith and therewith or pursuant hereto or thereto, shall prove at any time to have been incorrect in any material respect as of the date made;

then at any time after the occurrence of an Event of Default and while it is continuing (unless, in the case of an Event of Default described in subdivision (a) of this section 17, such Event of Default shall have been cured as provided in section 18) the Agent may upon written notice to the Owner and upon compliance with any legal requirements then in force and applicable to such action by the Agent, (i) cause the term of the Lease immediately upon such notice to terminate (and the Owner acknowledges the right of the Agent to terminate the Lease) but without affecting the indemnities or other agreements of the Lessee which by the provisions of the Lease survive the termination of its term and/or (ii) declare (referred to herein as a "Declaration of Default") the entire unpaid Conditional Sale 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 rate per annum

specified in section 5.4 as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Agent shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness, with interest as aforesaid, and to collect such judgment out of any property of the Owner, subject to the limitations of section 20.2, wherever situated. The Owner agrees to notify the Agent promptly of any event of which any of its officers responsible for the matters concerning this Agreement have knowledge which constitutes a Default or an Event of Default.

The Agent may, at its election, waive any 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 Owner in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if such Event of Default had not occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Owner 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.

#### SECTION 18. RIGHT TO CURE CERTAIN LEASE EVENTS OF DEFAULT.

In the event that an Event of Default has occurred and is continuing solely by reason of the Lessee's failure to pay an installment of Base Rent (as defined in the Lease) when due, which failure shall not constitute more than the second consecutive failure, or more than the fourth cumulative failure, by the Lessee to pay installments of Base Rent when due, the Agent (without requiring any instructions from any of the Lenders) shall give the Owner and the Lenders notice by telegraph or telex of such failure and, so long as no other Event of Default shall have occurred and be continuing, the Agent shall not exercise any of the rights and powers or pursue any of the remedies pursuant to section 17 of the Lease and sections 17 and 19 of this Agreement if the Agent shall have received from the Owner, within 10 days after such installment of Base Rent shall

have become due, the full amount of such installment, together with any interest due thereon. Upon any payment of Base Rent by the Owner in accordance with this section 18, the Owner shall (to the extent of any such payment made by it) be subrogated to the rights of the Agent to receive such payment of Base Rent (and the payment of interest on account of its being overdue) and shall be entitled, if the Lessee shall thereafter make such payment of Base Rent (and interest) and at such time no Event of Default shall have occurred and be continuing (other than an Event of Default cured by the Owner as provided in this section 18), to receive such payment upon its receipt by the Agent, provided that the Owner may not exercise any rights and powers or pursue any remedies pursuant to section 17 of the Lease or otherwise which the Agent would have been entitled to exercise or pursue but for the preceding sentence.

#### SECTION 19. REMEDIES.

(a) At any time during the continuance of a Declaration of Default, the Agent may, upon such further notice and action, 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 Agent, 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 the Owner or the Lessee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this section 19 expressly provided, and may remove the same from possession and use of the Owner, the Lessee or any other person and for such purpose may enter upon the premises of the Owner or the Lessee 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 Owner or the Lessee.

(b) In case the Agent 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 Agent, the Owner shall, at its own expense and risk:

(i) forthwith and in the usual manner (including, but not by way of limitation, causing prompt telegraphic and written notice to be given to the Association of American Railroads and all railroads

to which any unit or units of the Equipment have been interchanged to return the unit or units so interchanged) cause the Equipment to be placed upon such storage tracks of the Lessee as the Agent reasonably may designate or, at the option of the Agent, cause the units of Equipment to be removed from the units of railroad rolling stock to which they have been attached and cause such units of the Equipment to be placed at such location as the Agent reasonably may designate;

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

(iii) 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 Agent.

During any storage period, the Owner 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 Agent, the Agent'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 in the premises, the Agent shall be entitled to a decree against the Owner requiring specific performance hereof. The Owner hereby expressly waives any and all claims against the Agent 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.

(c) At any time during the continuance of a Declaration of Default, the Agent (after retaking possession of the Equipment as hereinbefore in this section 19 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Agent shall deem fit. Written notice of the Agent's election to retain the Equipment shall be given to the Owner by telegram or registered mail, addressed as provided in section 24, 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 Agent should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the further proviso below, all of the Owner's rights in the Equipment shall thereupon terminate and all payments made by the Owner may be retained by the Agent as compensation for the use of the Equipment, provided that if the Owner, before the expiration of the 30-day period described in the further proviso below, should pay or cause to be paid to the Agent the total unpaid balance of the Conditional Sale Indebtedness without premium, together with interest thereon accrued and unpaid and all other indebtedness and payments due under this Agreement and the Participation Agreement as well as expenses of the Agent in retaking possession of, removing and storing the Equipment and the Agent's and the Lenders' reasonable attorneys' fees and legal expenses, then in such event the Agent's security interest in the Equipment shall be released, provided further that if the Owner or any other persons notified under the terms of this subdivision (c) object in writing to the Agent within 30 days from the receipt of notice of the Agent's election to retain the Equipment, then the Agent 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 Agent shall not have given notice of intention 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 section 19.

(d) At any time during the continuance of a Declaration of Default, the Agent, with or without retaking possession of any Equipment, at its election and upon reasonable notice to the Owner 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 Owner or any other party claiming from, through or under the Owner at law or in equity, at public or private sale and with or without advertisement as the Agent may determine, provided that if, prior to such sale and prior to the making of a contract for such sale, the Owner should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness without premium, together with interest thereon accrued and unpaid and all other indebtedness and payments due under this Agreement and the Participation Agreement as well as expenses of the Agent in retaking possession of, removing,

storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Agent's and the Lenders' reasonable attorneys' fees and legal expenses, then in such event the Agent's security interest in the Equipment shall be released. The proceeds of such sale or other disposition shall be applied as set forth in section 19(g).

(e) Any sale under this Agreement may be held or conducted at New York, New York, at such time or times as the Agent may specify (unless the Agent shall specify a different place or places, in which case the sale shall be held at such place or places as the Agent 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 Agent may determine, so long as such sale shall be in a commercially reasonable manner. The Agent, any of the Lenders or the Owner may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner shall be given written notice of such sale not less than 10 days prior thereto by telegram or registered mail, addressed as provided in section 24. 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 less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Owner 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 Agent or any of the Lenders shall be the purchaser thereof, it shall not be accountable to the Owner (except to the extent of surplus money received as provided in subdivision (g) of this section 19), and in payment of the purchase price therefor the Agent or any of the Lenders shall be entitled to have credited on account thereof all sums due to the Agent or any of the Lenders under this Agreement.

(f) Each and every power and remedy hereby specifically given to the Agent shall be in addition to every other power and remedy hereby specifically given to the Agent 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 Agent. 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 Agent in the exercise of any such power or remedy and no renewal or extension of any payments due under this Agreement 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 under this Agreement or other indulgence duly granted to the Owner shall not otherwise alter or affect the Agent's rights or the Owner's obligations under this Agreement. The Agent's acceptance of any payment after it shall have become due under this Agreement shall not be deemed to alter or affect the Owner's obligations or the Agent's rights under this Agreement with respect to any subsequent payments or default therein.

(g) All sums of money realized by the Agent under the remedies provided in this section 19 or which are otherwise held by the Agent during the continuance of a Declaration of Default shall be applied as follows:

first, to the payment of any reasonable costs and expenses of the Agent or any of the Lenders in the Agent's retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale of the Equipment and the Agent's and the Lenders' reasonable attorneys' fees and legal expenses, and any taxes, assessments or charges on the Equipment prior to the Agent's security interest which the Agent may consider necessary or desirable to pay;

second, to the payment of any indebtedness (other than Conditional Sale Indebtedness) owed to the Agent or any of the Lenders secured by this Agreement and at the time due and payable, including, without limitation, indebtedness with respect to any amounts advanced by any of the Lenders to the Agent as indemnity, plus interest thereon, as provided in section 11.2 of the Participation Agreement;

third, to the payment of the aggregate unpaid principal amount of Conditional Sale Indebtedness then due and payable (whether at maturity or as part of an installment of combined principal and interest or by Declaration of Default or otherwise), plus the accrued but unpaid interest due thereon to the date of distribution (including interest on overdue principal and interest to the extent permitted under applicable law at the rate of 10.5% per annum), and

in case such moneys shall be insufficient to pay in full all such amounts at any time due and payable, then, first, to the payment of all amounts of interest at the time due and payable without preference or priority of any installment of interest over any other installment and, second, to the payment of all unpaid principal amounts of Conditional Sale Indebtedness at the time due and payable, without preference or priority of any installment or amount of principal over any other installment or amount of principal, all such payments of principal and interest to be made ratably to the Lenders; and

fourth, any other indebtedness secured by this Agreement and at the time due and payable.

If, after applying all sums of money realized by the Agent under the remedies provided in this section 19, there shall remain any amount due to the Agent or any of the Lenders under the provisions of this Agreement or the Participation Agreement, the Owner shall, subject to the provisions of section 20.2, pay the amount of such deficiency to the Agent upon demand, together with interest from the date of such demand to the date of payment, at the rate per annum specified in section 5.4 as being applicable to amounts remaining unpaid after becoming due and payable, and, if the Owner shall fail to pay such deficiency, the Agent may bring suit therefor and shall, subject to section 20.2, be entitled to recover a judgment therefor against the Owner. If, after applying as aforesaid all sums realized by the Agent, there shall remain a surplus in the possession of the Agent, such surplus shall be paid to the Owner.

(h) The Owner will pay all reasonable expenses, including attorneys' fees and legal expenses, incurred by the Agent and the Lenders in connection with the Agent's enforcing its remedies under the terms of this Agreement. In the event that the Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Agent and the Lenders may recover reasonable expenses, including reasonable attorneys' fees and legal expenses, and the amount thereof shall be included in such judgment.

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

SECTION 20. OBLIGATIONS AND LIABILITIES OF AGENT AND OWNER.

20.1 Agent Not Obligated for Delivery of Equipment. Notwithstanding anything to the contrary herein, expressed or implied, (a) the Agent shall have no obligation with respect to the reconstruction of the Hulks and delivery of the Equipment hereunder to the Owner and (b) it is expressly understood and agreed by the parties hereto that this Agreement is executed and delivered by the Agent not in its individual capacity but solely as Agent under the Participation Agreement.

20.2 Limitation of Owner's Liability. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of sections 17 and 19), the Agent agrees that the liability of the Owner for all payments to be made by it as contemplated by this Agreement, with the exceptions only of the payments to be made pursuant to sections 5.1(b) and 5.2(b) and the obligations set forth in the proviso to section 14(c) of this Agreement and in section 10 of the Lease Assignment and the payment of the Hulk Purchase Price, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", which term shall mean (a) if an Event of Default shall have occurred and be continuing, so much of the following amounts as are held by the Agent as assignee of the Owner under the Lease Assignment at any time after any such event and during the continuance thereof: (i) all amounts of rental and amounts in respect of Casualty Occurrences paid for or with respect to the Equipment pursuant to the Lease and any and all other payments made pursuant to section 17 of the Lease or any other provision of the Lease and (ii) any and all payments or proceeds made pursuant to the Lease or for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and (b) at any other time only that portion of the amounts referred to in the foregoing clauses (i) and (ii) as are held by the Agent as assignee of the Owner under the Lease Assignment and as shall be required to discharge the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall be required to discharge any other payments then

due and payable under this Agreement. Notwithstanding anything to the contrary contained in sections 17 and 19, the Agent agrees and each of the Lenders by its acceptance of an interest in the Conditional Sale Indebtedness agrees, except with respect to judgments relating to payments to be made by the Owner pursuant to sections 5.1(b) and 5.2(b) or relating to the obligations of the Owner set forth in the proviso to section 14(c) of this Agreement and in section 10 of the Lease Assignment, that any money judgment taken against the Owner shall, by its terms, provide that the entry and docketing thereof (and the filing of any transcript with respect thereto) shall not constitute or create a lien, or be enforceable, against any real property of the Owner, that the judgment creditors in respect of any such judgment shall not be entitled to any of the rights and remedies provided to a judgment creditor by law to enforce the lien of any such judgment against any real property of the Owner wherever situated, that such judgment shall be enforceable only against the Equipment and the income and proceeds from the Equipment, and that no judgment foreclosing any of the rights of the Owner with respect to the Equipment and any other property constituting collateral security for the Conditional Sale Indebtedness shall contain any provision for a deficiency judgment in favor of the Agent or any of the Lenders except with respect to payments to be made by the Owner pursuant to sections 5.1(b) and 5.2(b) or the obligations of the Owner set forth in the proviso to section 14(c) of this Agreement and in section 10 of the Lease Assignment. It is further agreed by the parties hereto that nothing contained herein limiting the liability of the Owner shall derogate from the right of the Agent to proceed against the Equipment as provided for herein for the full unpaid Invoiced Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder or to proceed against the Lessee under the Lease or the Consent.

SECTION 21. CONCERNING THE ASSIGNMENT OF BUILDER'S  
INTEREST IN NEW EQUIPMENT.

(a) The assignment in section 2.3 of the Builder's interest in the New Equipment and in this

Agreement (i) shall be without any recourse against the Builder for or on account of the failure of the Owner to make any of the payments provided for in, or otherwise to comply with any of the provisions of, this Agreement, (ii) shall not subject the Agent to, or transfer, or in any way affect or modify, the liability of the Builder to construct and deliver the New Equipment in accordance with this Agreement or the liability of the Builder with respect to any of its obligations contained or referred to in this Agreement, and (iii) shall not relieve the Owner from any of its obligations to the Builder contained or referred to in this Agreement. Notwithstanding such assignment, or any subsequent assignment pursuant to section 16.2, all obligations of the Builder to the Owner with respect to the New Equipment shall be and remain enforceable by the Owner, its successors and assigns, against and only against the Builder. The Builder hereby authorizes and empowers the Agent, for the Agent's sole benefit and in the Agent's own name or the name of its nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Agent is or may become entitled under such assignment and to ask, demand, sue for and enforce compliance by the Owner with the terms and agreements on its part to be performed under this Agreement with respect to the New Equipment.

(b) The Builder agrees that any amount payable to it by the Owner with respect to the New Equipment, whether pursuant to this Agreement or otherwise, not assigned to the Agent pursuant to this Agreement, shall not be secured by a Lien.

## SECTION 22. APPLICABLE STATE LAWS; WAIVERS

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, provided that, if the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner 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 Owner, 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 Agent's rights under this Agreement and any and all rights of redemption, and agrees that it will not assert against the Agent any claim or defense which it may now or hereafter have against the Builder.

#### SECTION 23. FURTHER ASSURANCES; RECORDING.

The Owner will cause to be done, executed, acknowledged and delivered all such further acts, conveyances and assurances as the Agent shall require for accomplishing the purposes of this Agreement. The Owner will take, or cause to be taken, such action with respect to the recording, filing, re-recording and re-filing of this Agreement or any amendments and supplements to this Agreement, and any financing statements, continuation statements or other instruments as is necessary, or as shall be deemed desirable by the Agent, the Lenders or counsel for the Agent or the Lenders to establish, perfect, preserve and protect, so long as any Conditional Sale Indebtedness shall remain outstanding, the security interests created by this Agreement. The Owner will, promptly after any change of name of the Owner or any successor, or any change of location of its principal place of business, the office where it keeps its records concerning the Hulks and the Equipment or any contracts relating thereto or its chief executive office, furnish to the Agent and the Builder information with respect to any such change.

#### SECTION 24. NOTICES.

All notices, requests, demands and other communications required or contemplated by the provisions of this Agreement shall, unless otherwise specified, be in writing or by telex or telegraph, and shall be deemed to have been given or made on the fourth Business Day after

deposit thereof in the United States mails, first-class postage prepaid, or when received if sent by telex or telegraph or delivered by hand, addressed as follows:

If to the Builder:

St. Louis - San Francisco  
Railway Company  
3253 East Trafficway  
Springfield, Missouri 65802  
Attention: Hampton B. Parker  
Vice President-Finance  
and Treasurer

If to the Owner:

The Bank of New York  
48 Wall Street  
New York, New York 10015  
Attention: Deno D. Papageorge  
Vice President

If to the Agent:

La Salle National Bank  
135 South La Salle Street  
Chicago, Illinois 60690  
Attention: Roland K. Weber  
Vice President

If to the Lender:

Teachers Insurance and Annuity  
Association of America  
730 Third Avenue  
New York, New York 10017  
Attention: Securities Division

or, as to any such person or any assignee of any such person, to such other address as such person or such assignee may from time to time specify to the other such persons in writing.

## SECTION 25. IMMUNITIES; SATISFACTION OF UNDERTAKINGS.

(a) No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, beneficiary, director or officer, as such, past, present or future, of the parties hereto, 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, beneficiaries, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

(b) The obligations of the Owner under sections 4.2, 8, 9.1, 9.2 (except the third and fourth sentences of subdivision (a) to the extent such sentences require delivery of certificates and payment schedules), 10, 11, 12, 13(c), 14 (except the proviso to subdivision (c)), 15.1, 19(b), 19(g), 19(h) and 23 (except the last sentence) shall be deemed in all respects satisfied by the Lessee's undertakings contained in the Lease. The Owner 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 section 17. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Agent and the Lenders.

## SECTION 26. MISCELLANEOUS.

### 26.1 Severability.

Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement and any such prohibition or unenforceability in any jurisdiction shall not of itself invalidate or render unenforceable such provision in any other jurisdiction.

### 26.2 Waivers; Modifications.

No term or provision of this Agreement may be changed, waived, discharged or terminated orally, but

only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought; no such instrument shall be effective (except as to a waiver by any party hereto of one or more closing conditions set forth in section 6, where waiver by telex or telegram shall be effective) unless a signed copy thereof shall have been delivered to the Builder, the Owner and the Agent.

### 26.3 Binding Effect; Successors and Assigns.

The terms and provisions of this Agreement and the respective rights and obligations of the parties hereunder shall be binding upon, and inure to the benefit of, their respective successors and (to the extent assignments are permitted by this Agreement and the Participation Agreement) assigns.

### 26.4 Captions; References.

The captions in this Agreement and in the table of contents are for convenience of reference only and shall not define or limit any of the terms or provisions hereof. References herein to sections and subdivisions without reference to the document in which they are contained are references to this Agreement.

### 26.5 Execution; Original Counterpart.

This Agreement may be executed by the parties hereto on separate counterparts and all such counterparts shall together constitute but one and the same instrument. To the extent, if any, that this Agreement constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction), no security interest in this Agreement may be created through the transfer or possession of any counterpart other than the original counterpart, which shall be identified as the counterpart containing the receipt therefor executed by the Agent on the signature page thereof.

### 26.6 Governing Law.

This Agreement is being made and delivered in, and shall be governed by and construed in accordance with the laws of, the State of New York.

IN WITNESS WHEREOF, the parties hereto have

caused this Agreement to be duly executed by their respective officers thereunto duly authorized as of the day and year first above written.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

[Seal]

Attest: [Signature]  
(Title) Asst. Secretary

By [Signature]  
(Title) Vice President

THE BANK OF NEW YORK

[Seal]

Attest: [Signature]  
(Title) Deputy Secretary

By [Signature]  
(Title) Vice President

LA SALLE NATIONAL BANK,  
not in its individual capacity  
but solely as Agent

[Seal]

Attest: [Signature]  
(Title) ASSISTANT SECRETARY

By [Signature]  
(Title) VICE PRESIDENT

ALL RIGHT, TITLE AND INTEREST OF ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY IN AND TO THIS CONDITIONAL SALE AND RECONSTRUCTION AGREEMENT, AS IT MAY FROM TIME TO TIME BE AMENDED, MODIFIED OR SUPPLEMENTED, HAS BEEN ASSIGNED TO AND IS SUBJECT TO A SECURITY INTEREST IN FAVOR OF LA SALLE NATIONAL BANK, AS AGENT. AN ORIGINAL AND SEVERAL COUNTERPARTS OF THIS AGREEMENT HAVE BEEN EXECUTED, BUT, AS SET FORTH IN SECTION 26.5, NO SECURITY INTEREST IN THIS AGREEMENT MAY BE CREATED THROUGH THE TRANSFER OR POSSESSION OF ANY COUNTERPART OTHER THAN THE ORIGINAL COUNTERPART, WHICH IS IDENTIFIED AS THE COUNTERPART CONTAINING THE RECEIPT THEREFOR EXECUTED BY THE AGENT ON THE SIGNATURE PAGE THEREOF.

STATE OF MISSOURI )  
 ) ss.:  
CITY OF ST. LOUIS )

On this 19<sup>th</sup> day of March 1979, before me personally appeared DONALD E. ENGLE, to me personally known, who, being by me duly sworn, says that he is a Vice President of St. Louis-San Francisco Railway Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

My Commission Expires August 2, 1981

Mary L. Allhoff  
Notary Public ~~Mary L. Allhoff~~

[NOTARIAL SEAL]

Commissioned within and for the County of St. Louis, Missouri which adjoins City of St. Louis, Missouri, where this act was performed.

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

On the 16<sup>th</sup> day of March, in the year 1979, before me personally came Donald D. Duff to me known, who being by me duly sworn, did depose and say that he resides at RD 1 Gardley Pa that he is Vice President of the Bank of New York, the corporation described in and which executed the above instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

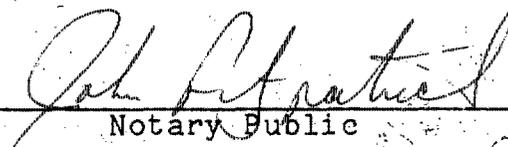
Debra A. Mcintosh  
Notary Public

[NOTARIAL SEAL]

DEBRA A. McINTOSH  
Notary Public, State of New York  
No. 41-4634099  
Qualified in Queens County  
Commission Expires March 30, 1979

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

On this *14TH* day of March 1979, before me personally appeared Roland K. Weber, to me personally known, who, being by me duly sworn, says that he is a Vice President of La Salle National Bank, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was on March *13*, 1979 signed and sealed on behalf of said national banking association 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 national banking association.

  
 Notary Public

[NOTARIAL SEAL]

My Commission Expires

My Commission Expires August 24, 1982

SCHEDULE I

New Equipment

<u>Quantity</u>	<u>Builder's Specification</u>	<u>SLSF Serial Numbers</u>	<u>Estimated Purchase Price Per Unit</u>	<u>Total</u>
125	SLSF Spec. #1001	SLSF R-226 to R-350 (inclusive)	\$30,000	\$3,750,000

SCHEDULE II

Reconstructed Equipment

<u>Quantity</u>	<u>Builder's Specification</u>	<u>SLSF Serial Numbers</u>	<u>Hulk</u>		<u>Estimated Reconstruction Cost</u>		<u>Estimated Purchase Price</u>	
			<u>Per Unit</u>	<u>Total</u>	<u>Per Unit</u>	<u>Total</u>	<u>Per Unit</u>	<u>Total</u>
40	SLSF Spec. #1002	SLSF R-351 to R-390 (inclusive)	\$2,500	\$100,000	\$17,700	\$708,000	\$20,200	\$808,000

## SCHEDULE III

Estimated Dates of  
Equipment Closings

<u>Dates (1979)</u>	<u>Units of Equipment</u>
March 19	30 New
April 9	15 New
April 30	15 New
May 21	18 New
June 4	20 New
June 20	15 New
June 29	12 New 10 Reconstructed
July 30	10 Reconstructed
August 15	20 Reconstructed

## SCHEDULE IV

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness  
Relating to the New Equipment

<u>Payment Date*</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Ending Principal</u>
Interim	*	*	\$ -0-	\$1,000,000.00
1	\$ 72,556.45	\$ 47,500.00	25,056.45	974,943.55
2	72,556.45	46,309.82	26,246.63	948,696.92
3	72,556.45	45,063.10	27,493.35	921,203.57
4	72,556.45	43,757.17	28,799.28	892,404.29
5	72,556.45	42,389.20	30,167.25	862,237.04
6	72,556.45	40,956.26	31,600.19	830,636.85
7	72,556.45	39,455.25	33,101.20	797,535.65
8	72,556.45	37,882.94	34,673.51	762,862.14
9	72,556.45	36,235.95	36,320.50	726,541.64
10	72,556.45	34,510.73	38,045.72	688,495.92
11	72,556.45	32,703.56	39,852.89	648,643.03
12	72,556.45	30,810.54	41,745.91	606,897.12
13	72,556.45	28,827.61	43,728.84	563,168.28
14	72,556.45	26,750.49	45,805.96	517,362.32
15	72,556.45	24,574.71	47,981.74	469,380.58
16	72,556.45	22,295.58	50,260.87	419,119.71
17	72,556.45	19,908.19	52,648.26	366,471.45
18	72,556.45	17,407.39	55,149.06	311,322.39
19	72,556.45	14,787.81	57,768.64	253,553.75
20	72,556.45	12,043.80	60,512.65	193,041.10
21	54,124.05	9,169.45	44,954.60	148,086.50
22	54,124.05	7,034.11	47,089.94	100,996.56
23	54,124.05	4,797.34	49,326.71	51,669.85
24	54,124.17	2,454.32	51,669.85	0.
	<u>\$1,667,625.32</u>	<u>\$667,625.32</u>	<u>\$1,000,000.00</u>	

\* Interest only shall be payable to the extent accrued on the Interim Payment Date, which is the Cut-off Date. The first Payment Date shall be the date of the sixth calendar month after the Cut-off Date corresponding with the Cut-off Date and each successive Payment Date shall be the same date of each successive sixth calendar month thereafter (or if any such month does not have a corresponding date, then the date of the last day of such month).

## SCHEDULE V

Allocation Schedule of Each  
\$1,000,000 of Conditional  
Sale Indebtedness  
Relating to the Reconstructed Equipment

<u>Payment Date*</u>	<u>Debt Service</u>	<u>Interest Payment</u>	<u>Principal Payment</u>	<u>Ending Principal</u>
Interim	*	*	\$ -0-	\$1,000,000.00
1	\$ 78,550.47	\$ 47,500.00	31,050.47	968,949.53
2	78,550.47	46,025.10	32,525.37	936,424.17
3	78,550.47	44,480.15	34,070.32	902,353.85
4	78,550.47	42,861.81	35,688.66	866,665.19
5	78,550.47	41,166.60	37,383.87	829,281.32
6	78,550.47	39,390.86	39,159.61	790,121.72
7	78,550.47	37,530.78	41,019.69	749,102.03
8	78,550.47	35,582.35	42,968.12	706,133.91
9	78,550.47	33,541.36	45,009.11	661,124.80
10	78,550.47	31,403.43	47,147.04	613,977.77
11	78,550.47	29,163.94	49,386.53	564,591.24
12	78,550.47	26,818.08	51,732.39	512,858.85
13	78,550.47	24,360.80	54,189.67	458,669.19
14	78,550.47	21,786.79	56,763.68	401,905.51
15	78,550.47	19,090.51	59,459.96	342,445.55
16	78,550.47	16,266.16	62,284.31	280,161.24
17	78,550.47	13,307.66	65,242.81	214,918.44
18	78,550.47	10,208.63	68,341.84	146,576.60
19	78,550.47	6,962.39	71,588.08	74,988.52
20	78,550.47	3,561.95	74,988.52	0.
	<u>\$1,571,009.35</u>	<u>\$571,009.35</u>	<u>\$1,000,000.00</u>	

\* Interest only shall be payable to the extent accrued on the Interim Payment Date, which is the Cut-off Date. The first Payment Date shall be the date of the sixth calendar month after the Cut-off Date corresponding with the Cut-off Date and each successive Payment Date shall be the same date of each successive sixth calendar month thereafter (or if any such month does not have a corresponding date, then the date of the last day of such month).