

8217

**BURLINGTON NORTHERN**

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**FILE IN DOCKET**

Office of the Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

February 20, 1976

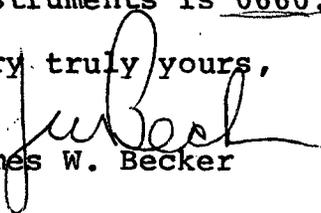
Gentlemen:

Please refer to my letter dated February 13, 1976 conveying for filing under Section 20c of the Interstate Commerce Act the following documents:

1. Conditional Sale Agreement dated as of January 1, 1976 between General Motors Corporation (Electro-Motive Division) and United States Trust Company of New York which was duly filed on February 19, 1976 and assigned recordation No. 8217.
2. Agreement and Assignment dated as of January 1, 1976 between General Motors Corporation (Electro-Motive Division) and Continental Illinois National Bank and Trust Company of Chicago which was duly filed on February 19, 1976 and assigned recordation No. 8217-A.
3. Lease of Railroad Equipment dated as of January 1, 1976 between Burlington Northern Inc. and United States Trust Company of New York which was duly filed on February 19, 1976 and assigned recordation No. 8217-B.
4. Assignment of Lease and Agreement dated as of January 1, 1976 between United States Trust Company of New York and Continental Illinois National Bank and Trust Company of Chicago which was duly filed on February 19, 1976 and assigned recordation No. 8217-C.

Supplementing that letter this is to advise that the AAR mechanical designation of the 45 3,000 hp Model SD 40-2 diesel locomotives included under the above referred to instruments is 0660.

Very truly yours,

  
James W. Becker

JB:je

RECORDATION NO. 8217 Filed & Recorded

FEB 19 1976-8 15 AM

INTERSTATE COMMERCE COMMISSION

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CONDITIONAL SALE AGREEMENT

Dated as of January 1, 1976

between

UNITED STATES TRUST COMPANY OF NEW YORK,  
as Trustee under a Trust Agreement  
dated as of the date hereof  
with General Electric Credit Corporation,  
Union Bank & Trust Company and Packers  
National Bank in Omaha

and

GENERAL MOTORS CORPORATION  
(Electro-Motive Division)

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CONDITIONAL SALE AGREEMENT

Table of Contents\*

	<u>Page</u>
PARTIES .....	1
PREAMBLES .....	1
ARTICLE 1. ASSIGNMENT; DEFINITIONS .....	2
1.1. Contemplated Sources of Purchase Price; Assignment .....	2
1.2. Lease Assignment .....	2
1.3. Meaning of "Builder" and "Vendor" .....	2
ARTICLE 2. CONSTRUCTION AND SALE .....	2
ARTICLE 3. INSPECTION AND DELIVERY .....	3
3.1. Place of Delivery .....	3
3.2. Force Majeure .....	3
3.3. Exclusion of Equipment Not Delivered by December 31, 1976.....	4
3.4. Inspection .....	4
3.5. Builder's Responsibility After Delivery ...	5
ARTICLE 4. PURCHASE PRICE AND PAYMENT .....	5
4.1. Meaning of "Purchase Price"; Exclusion of Units .....	5
4.2. Designation of Group A, B and C Equipment; Settlement and Closing Dates .....	6
4.3. Indebtedness of Owner-Trustee to Vendor ...	6
4.4. Conditional Sale Indebtedness; Payment Dates; Interest .....	7
4.5. Calculation of Interest .....	9
4.6. Penalty Interest .....	9

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

	<u>Page</u>
4.7. Currency of Payment .....	9
4.8. Conditions to Obligations of Owner-Trustee .	9
4.9. Liability of Owner-Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments .....	10
ARTICLE 5. SECURITY INTEREST IN THE EQUIPMENT .....	12
5.1. Vendor To Retain Security Interest; Acces- sions Are Part of Equipment .....	12
5.2. Obligations Upon Payment of Conditional Sale Indebtedness .....	13
ARTICLE 6. TAXES .....	13
6.1. Indemnification of Non-Income Taxes .....	13
6.2. Claims; Contests; Refunds .....	14
6.3. Reports or Returns .....	15
6.4. Survival .....	15
6.5. Article 6 Subject to Articles 4 and 23 .....	15
ARTICLE 7. MAINTENANCE; CASUALTY OCCURRENCES .....	16
7.1. Maintenance .....	16
7.2. Casualty Occurrences .....	16
7.3. Obligations upon Payment of Casualty Value .....	17
7.4. Casualty Value .....	17
ARTICLE 8. INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS .....	17
ARTICLE 9. REPORTS AND INSPECTIONS .....	18
ARTICLE 10. MARKING OF EQUIPMENT .....	18
10.1. Marking of Equipment .....	18
10.2. No Designations of Ownership .....	19
10.3. Article 10 Subject to Article 23 .....	19
ARTICLE 11. COMPLIANCE WITH LAWS AND RULES .....	19
11.1. Compliance with Laws and Rules .....	19
11.2. Article 11 Subject to Article 23 .....	20

	<u>Page</u>
ARTICLE 12. POSSESSION AND USE .....	20
12.1. Possession and Use of Equipment by Owner-Trustee .....	20
12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination .....	20
12.3. Other Leases of Equipment .....	20
ARTICLE 13. PROHIBITON AGAINST LIENS .....	21
13.1. Owner-Trustee To Discharge Liens .....	21
13.2. No Breach for Certain Liens .....	21
13.3. Article 13 subject to Article 23 except in Certain Instances .....	21
ARTICLE 14. INDEMNITIES AND WARRANTIES .....	22
14.1. Indemnification .....	22
14.2. Survival; No Subrogation .....	24
14.3. Owner-Trustee Not Released If Equipment Damaged or Lost .....	24
14.4. Warranty of Builder; Patent Indemnity; Subject to Article 23 .....	24
ARTICLE 15. ASSIGNMENTS .....	25
15.1. Assignment by Owner-Trustee .....	25
15.2. Assignment by Vendor .....	25
15.3. Notice of Assignment by Vendor .....	25
15.4. No Set-Off Against Conditional Sale Indebtedness Upon Assignment .....	25
15.5. Exclusion of Equipment Not Settled For ....	26
ARTICLE 16. DEFAULTS .....	26
16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness .....	26
16.2. Waiver of Defaults .....	29
ARTICLE 17. REMEDIES .....	29
17.1. Vendor May Take Possession of Equipment ...	29
17.2. Assembling of Equipment for Vendor .....	29
17.3. Vendor May Dispose of or Retain Equipment .	30
17.4. Vendor May Sell Equipment; Owner-Trustee's Right of Redemption .....	31

	<u>Page</u>
17.5. Sale of Equipment by Vendor .....	32
17.6. Effect of Remedies and Powers and Exercise Thereof .....	32
17.7. Deficiencies .....	33
17.8. Expenses .....	33
17.9. Remedies Subject to Mandatory Legal Requirements .....	34
ARTICLE 18. APPLICABLE STATE LAWS .....	34
18.1. Conflicts with State Laws .....	34
18.2. Waiver of Notices .....	34
ARTICLE 19. RECORDING .....	34
ARTICLE 20. REPRESENTATION AND WARRANTY OF BUILDER .....	35
ARTICLE 21. ARTICLE HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT; AMENDMENTS .....	35
21.1. Article Headings for Convenience Only .....	35
21.2. Effect and Modification of Agreement .....	35
ARTICLE 22. NOTICE .....	36
ARTICLE 23. IMMUNITIES; SATISFACTION OF UNDERTAKINGS .....	36
23.1. No Recourse Against Certain Persons .....	36
23.2. Satisfaction of Certain Covenants of Owner-Trustee .....	37
23.3. No Personal Liability of Owner-Trustee .....	37
ARTICLE 24. LAW GOVERNING .....	38
ARTICLE 25. EXECUTION .....	38
TESTIMONIUM .....	39
SIGNATURES .....	39
ACKNOWLEDGMENTS	
Annex A--Miscellaneous	
Annex B--Specifications	

Annex C--Lease

Annex D--Assignment of Lease and Agreement

Annex E--Participation Agreement

CONDITIONAL SALE AGREEMENT dated as of January 1, 1976, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Vendor or Builder as more particularly set forth in Article 1 hereof) and UNITED STATES TRUST COMPANY OF NEW YORK, a New York corporation, acting as Trustee (hereinafter called the Owner-Trustee) under a Trust Agreement dated as of the date hereof (hereinafter called the Trust Agreement) with General Electric Credit Corporation, Union Bank & Trust Company and Packers National Bank in Omaha (said corporation and said banks so acting being hereinafter called the Owners).

WHEREAS the Builder agrees to construct, sell and deliver to the Owner-Trustee, and the Owner-Trustee agrees to purchase, subject to the terms and conditions hereof, the railroad equipment described in Annex B hereto to the extent not excluded herefrom under the provisions hereof (hereinafter sometimes called the Group A, B or C Equipment as more specifically described in paragraph 4.2 of Article 4 hereof and collectively called the Equipment);

WHEREAS the Owner-Trustee is entering into a lease dated as of the date hereof with BURLINGTON NORTHERN INC., a Delaware corporation (hereinafter called the Lessee) in substantially the form annexed hereto as Annex C (hereinafter called the Lease);

WHEREAS Continental Illinois National Bank and Trust Company of Chicago (hereinafter called the Assignee) is acting as agent for certain investors pursuant to a Finance Agreement dated as of the date hereof (hereinafter called the Finance Agreement), among the Assignee and the parties named in Schedule A thereto (hereinafter called the Investors); and

WHEREAS the Owner-Trustee, the Owners and the Lessee are entering into a participation agreement dated as of the date hereof (hereinafter called the Participation Agreement) in substantially the form annexed hereto as Annex E wherein the parties thereto are making certain agreements with respect to the Equipment;

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

## ARTICLE 1

## ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. Except to the extent required under subparagraph (a) of paragraph 4.3 of Article 4 hereof, the parties hereto contemplate that the Owner-Trustee will furnish 35% of the Purchase Price (as defined in paragraph 4.1 of Article 4 hereof) of the Equipment and that an amount equal to the balance of such Purchase Price shall be paid to the Builder pursuant to an Agreement and Assignment dated as of the date hereof (such Agreement and Assignment being hereinafter called the Assignment) between the Builder and the Assignee.

1.2 Lease Assignment. In case of such assignment, the Owner-Trustee will assign to the Vendor, as security for the payment and performance of all the Owner-Trustee's obligations hereunder, all right, title, and interest of the Owner-Trustee in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form of Annex D hereto (hereinafter called the Lease Assignment).

1.3. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, the Builder, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights, as regards such right, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment. Any reference herein to this Agreement or any other agreement shall mean said agreement and all amendments and supplements hereto or thereto then in effect.

## ARTICLE 2

## CONSTRUCTION AND SALE

Pursuant to this Agreement, the Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to the Owner-Trustee, and

the Owner-Trustee will (as hereinafter provided) purchase from the Builder and accept delivery of and pay for the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Owner-Trustee and the Lessee (which specifications and modifications, if any, are hereinafter called the Specifications). The Builder agrees that the design, quality and component parts of each unit of the Equipment shall conform, on the date of delivery and acceptance thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be new railroad equipment.

### ARTICLE 3

#### INSPECTION AND DELIVERY

3.1. Place of Delivery. The Builder will deliver the units of the Equipment to the Owner-Trustee at the place or places specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated from time to time by the Owner-Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of any unit of the Equipment shall not be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act and deposited with the Registrar General of Canada pursuant to Section 86 of The Railway Act of Canada and provision will have been made for publication of notice of such deposit in The Canada Gazette and such unit shall have been settled for pursuant to Article 4 hereof; and provided, further, that the Builder shall have no obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of paragraph 16.1 of Article 16 hereof or the occurrence of any event of default (as described in paragraph 16.1 of Article 16 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default.

3.2. Force Majeure. The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, includ-

ing but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

3.3. Exclusion of Equipment Not Delivered by December 31, 1976. Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to paragraph 4.3 of Article 4 hereof before December 31, 1976, shall be excluded from this Agreement and the Owner-Trustee shall be relieved of its obligation to purchase and pay for such Equipment. If any Equipment shall be excluded herefrom pursuant to the immediately preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. In the event of any such exclusion of any unit of Equipment herefrom, the Lessee will be obligated to accept all such units completed and delivered by the Builder and to pay the full purchase price therefor when due, all in accordance with the terms of its prior contractual arrangements with the Builder relating to the Equipment (hereinafter called the Purchase Order) and the Owner-Trustee will reassign, transfer and set over to the Lessee all the right, title and interest of the Owner-Trustee in and to the units so excluded and the Purchase Order to the extent relating thereto.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Owner-Trustee (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 the materials used in the construction of the Equipment in accordance with the standard quality control practices of the Builder. Upon or after completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Owner-Trustee for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications and requirements and standards applicable thereto, such inspector or an authorized representative of the Owner-Trustee (who may be an employee of the Lessee) shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and

accepted on behalf of the Owner-Trustee and are marked in accordance with paragraph 10.1 of Article 10 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof; and provided further that no unit of Equipment shall be delivered and no certificate of acceptance shall be delivered except simultaneously with the completion of the Closing with respect to such unit. By § 2 of the Lease, the Owner-Trustee is appointing the Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by the Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by the Owner-Trustee.

3.5. Builder's Responsibility After Delivery. On delivery and acceptance of each such unit hereunder at the place specified for delivery, the Builder shall have no further responsibility for, nor bear any risk of, any damage to or the destruction or loss of such unit; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in paragraph 14.4 of Article 14 hereof.

#### ARTICLE 4

##### PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Owner-Trustee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in paragraph 4.2 of this Article) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as to which the Owner-Trustee and the Lessee may at their option agree), the Builder (and the Assignee) will, upon request of the Owner-Trustee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Owner-Trustee and the Lessee, as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than the Maximum Pur-

chase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid) and the Owner-Trustee shall have no further obligation or liability in respect of units so included.

4.2. Designation of Group A, B and C Equipment; Settlement and Closing Dates. All units of Equipment delivered, accepted and settled for hereunder (i) on or prior to May 3, 1976, shall be designated Group A Equipment, (ii) after May 3, 1976, but prior to July 1, 1976, shall be designated Group B Equipment and (iii) on or after July 1, 1976, but on or prior to December 31, 1976, shall be designated Group C Equipment. The parties hereby agree that they will enter into a supplement hereto setting forth the road numbers of the units of Equipment to be so designated as Group A, B or C Equipment promptly after the Closing Date for the Group C Equipment. The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by the Owner-Trustee as is provided in Item 2 of Annex A hereto. The term "Closing Date" with respect to any Group (as hereinafter defined) shall mean such date as is specified by the Lessee in accordance with Item 2 of Annex A hereto by ten days' written notice thereof with the concurrence of the Owner-Trustee, the Assignee and the Builder. Such notice shall specify the aggregate Purchase Price of such Group and a copy thereof shall be sent to the Builder, the Assignee and the Owner-Trustee by the Lessee. The term "Group", as used herein, shall mean the group of units of Equipment being settled for on any Closing Date. The place of each closing shall be determined by mutual agreement among the parties hereto. Five business days prior to the Closing Date the Builder shall present to the Owner-Trustee and the Lessee the invoice for the Equipment to be settled for. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in New York, New York, or Chicago, Illinois, are authorized or obligated to remain closed.

4.3. Indebtedness of Owner-Trustee to Vendor. Subject to the terms of this Agreement, the Owner-Trustee hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash or immediately available funds to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) on the Closing Date with respect to each Group an amount equal to (i) 35% of the aggregate Purchase

Price of the units of Equipment in such Group plus (ii) the amount, if any, by which (x) 65% of the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made exceeds (y) the amount specified in Item 6 of Annex A hereto and any amount or amounts previously paid or payable pursuant to this clause (ii); and

(b) in 30 semiannual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in instalments under this subparagraph (b) being hereinafter called the Conditional Sale Indebtedness).

4.4. Conditional Sale Indebtedness; Payment Dates; Interest.

(1) The instalments of the Conditional Sale Indebtedness in respect of the Group A Equipment (hereinafter called the Group A Conditional Sale Indebtedness) shall be payable semiannually on each May 3 and November 3 in each year, commencing November 3, 1976, to and including May 3, 1991, each such date being hereinafter called a Group A Payment Date. The unpaid balance of the Group A Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred (i) at the rate of 9% per annum in respect of the portion thereof payable in instalments on November 3, 1976, through May 3, 1981, and (ii) at the rate of 10% per annum in respect of the portion thereof payable in instalments on November 3, 1981, through May 3, 1991. Interest on the unpaid balance of the Group A Conditional Sale Indebtedness shall be payable to the extent accrued on May 3, 1976, and on each Group A Payment Date thereafter. The instalments of Group A Conditional Sale Indebtedness payable on each Group A Payment Date shall be calculated so that the aggregate of Group A Conditional Sale Indebtedness and interest payable (i) on each of the first 10 Group A Payment Dates shall be substantially equal and shall completely amortize 19.3205% of the Group A Conditional Sale Indebtedness and (ii) on each of the last 20 Group A Payment Dates shall be substantially equal and shall completely amortize the remaining balance of the Group A Conditional Sale Indebtedness. (2) The instalments of the Conditional Sale Indebtedness in respect of the Group B Equipment (hereinafter called the Group B Conditional Sale Indebtedness) shall be payable semiannually on each July 1 and January 1 in each

year, commencing January 1, 1977, to and including July 1, 1991, each such date being hereinafter called a Group B Payment Date. The unpaid balance of the Group B Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred (i) at the rate of 9% per annum in respect of the portion thereof payable in instalments on January 1, 1977, through July 1, 1981, and (ii) at the rate of 10% per annum in respect of the portion thereof payable in instalments on January 1, 1982, through July 1, 1991. Interest on the unpaid balance of the Group B Conditional Sale Indebtedness shall be payable to the extent accrued on July 1, 1976, and on each Group B Payment Date thereafter. The instalments of Conditional Sale Indebtedness payable on each Group B Payment Date shall be calculated so that the aggregate of Group B Conditional Sale Indebtedness and interest payable (i) on each of the first 10 Group B Payment Dates shall be substantially equal and shall completely amortize 19.3205% of the Group B Conditional Sale Indebtedness and (ii) on each of the last 20 Group B Payment Dates shall be substantially equal and shall completely amortize the remaining balance of the Group B Conditional Sale Indebtedness. (3) The instalments of the Conditional Sale Indebtedness in respect of the Group C Equipment (hereinafter called the Group C Conditional Sale Indebtedness) shall be payable on the first semiannual anniversary of the Closing Date\* for the Group C Equipment (hereinafter called the Group C Closing Date) and on each of the next 29 semiannual anniversaries thereof, each such date being hereinafter called a Group C Payment Date. The Owner-Trustee will give the Vendor notice of the Group C Payment Dates immediately after the Closing Date for the Group C Equipment and the Vendor shall give notice of the same to the Investors. The unpaid balance of the Group C Conditional Sale Indebtedness shall bear inter-

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\* Said Closing Date to occur on or after July 1, 1976, and on or prior to December 31, 1976, as set forth in Item 2 of Annex A hereto.

est from the Group C Closing Date (i) at the rate of 9% per annum in respect of the portion thereof payable in instalments on the first 10 Group C Payment Dates and (ii) at the rate of 10% per annum in respect of the portion thereof payable in 20 instalments on the last 20 Group C Payment Dates. Interest on the unpaid balance of the Group C Conditional Sale Indebtedness shall be payable to the extent accrued on each Group C Payment Date. The instalments of Group C Conditional Sale Indebtedness payable on each Group C Payment Date shall be calculated so that the aggregate of Group C Conditional Sale Indebtedness and interest payable (i) on each of the first 10 Group C Payment Dates shall be substantially equal and shall completely amortize 19.3205% of the Group C Conditional Sale Indebtedness and (ii) on each of the last 20 Group C Payment Dates shall be substantially equal and shall completely amortize the remaining balance of the Group C Conditional Sale Indebtedness.

(2) If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the next succeeding business day, and no interest shall be payable thereon from and after the nominal date for payment thereof to such next succeeding business day.

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

4.6. Penalty Interest. The Owner-Trustee will pay interest, to the extent legally enforceable, at the rate of 11% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

4.7. Currency of Payment. All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 7 hereof, the Owner-Trustee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

4.8. Conditions to Obligations of Owner-Trustee. The obligation of the Owner-Trustee to pay to the Vendor any amount required to be paid pursuant to subparagraph (a)

of paragraph 4.3 of this Article with respect to any Group is specifically subject to the fulfillment on or before the Closing Date in respect of such Group, of the conditions set forth in Paragraph 5.01 of the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement) among the Lessee, the Owners and the Owner-Trustee (any of which may be waived by the Owner-Trustee, and payment by the Owner-Trustee of the amount specified in subparagraph (a) of paragraph 4.3 of this Article with respect to such Group shall be conclusive evidence that such conditions have been fulfilled or, if not fulfilled, irrevocably waived).

4.9. Liability of Owner-Trustee to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 16 and 17 hereof, except as set forth in this paragraph 4.9), but not limiting the effect of Article 23 hereof, it is understood and agreed by the Vendor that the liability of the Owner-Trustee or any assignee of the Owner-Trustee for all payments to be made by it under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of paragraph 4.3 of this Article and the proviso of paragraph 13.3 of Article 13 hereof, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by the Owner-Trustee only to the extent that the Owner-Trustee or any assignee of the Owner-Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the next preceding sentence, the Vendor agrees that the Owner-Trustee shall have no personal liability to make any payments under this Agreement whatsoever except from the "income and proceeds from the Equipment" to the extent actually received by the Owner-Trustee or any assignee of the Owner-Trustee. In addition, the Vendor agrees that the Owner-Trustee

(i) makes no representation or warranty as to, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease, in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder, and

(ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, rep-

representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights under the Lease and the Lease Assignment against the Lessee and the Equipment.

As used herein the term "income and proceeds from the Equipment" shall mean

(i) if one of the events of default specified in paragraph 16.1 of Article 16 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in paragraph 7.2 of Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 13 or any other provision of the Lease and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition, and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) [not including amounts paid by the Lessee to the Owner-Trustee as reimbursement of sums paid by the Owner-Trustee on account of prior defaults under subparagraph A of paragraph 13.1 of § 13 of the Lease] as are indefeasibly received by the Owner-Trustee or any assignee of the Owner-Trustee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (a) and (b) which were received by the Owner-Trustee or any assignee of the Owner-Trustee prior to the existence of such an event of default which exceeded the

amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by the Owner-Trustee or any assignee of the Owner-Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. Nothing contained herein limiting the liability of the Owner-Trustee shall derogate from the right of the Vendor to proceed against the Equipment as provided for herein for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder. Notwithstanding anything to the contrary contained in Article 16 or 17 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Owner-Trustee for an amount in excess of the amounts payable by the Owner-Trustee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph.

## ARTICLE 5

### SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor to Retain Security Interest; Accessories are Part of Equipment. The Vendor shall and hereby does retain a security interest in the Equipment until the Owner-Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of the Owner-Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by the Owner-Trustee and the Lessee as provided in this Agreement and the Lease. Such retention of security interest is solely to secure performance of the Owner-Trustee of its obligations under this Agreement (without regard to any provision of this Agreement limiting the liability of the Owner-Trustee), and beneficial ownership of the Equipment shall be and remain in the Owner-Trustee subject to such performance. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Rail-

roads and/or the Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations Upon Payment of Conditional Sale Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when the Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Owner-Trustee at that time, will (a) execute an instrument releasing its security interest in the Equipment and transferring such interest to the Owner-Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to the Owner-Trustee at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Owner-Trustee to the Equipment and (c) pay to the Owner-Trustee any money paid to the Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. The Owner-Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Owner-Trustee.

## ARTICLE 6

### TAXES

6.1. Indemnification of Nonincome Taxes. Whether or not any of the transactions contemplated hereby are con-

summated, the Owner-Trustee agrees to pay, and to indemnify and hold the Vendor harmless from, all taxes, assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon the Owner-Trustee, the Owners, the Vendor, the Lessee, the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States or by any foreign country or subdivision thereof, upon or with respect to: any unit of the Equipment or any part thereof; the purchase, ownership, delivery, leasing, possession, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of the Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or jurisdiction on its world-wide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; (ii) any Taxes imposed on or measured by any fees or compensation received by the Vendor; and (iii) Taxes which are imposed on or measured solely by the net income of the Vendor if and to the extent that such Taxes are in substitution for or reduce the Taxes payable by any other person which the Owner-Trustee has not agreed to pay or indemnify against pursuant to this Article 6.

6.2. Claims; Contests; Refunds. If claim is made against the Vendor for any Taxes indemnified against under this Article 6, the Vendor shall promptly notify the Owner-Trustee. If reasonably requested by the Owner-Trustee in writing, the Vendor shall, upon receipt of any indemnity satisfactory to it for all costs, expenses, losses, legal and

accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of the Owner-Trustee contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. The Owner-Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of the Vendor; provided that, no proceeding or actions relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of the Vendor in any such proceeding or action) without the prior written consent of the Vendor. If the Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by the Owner-Trustee in connection with any such contest or an amount representing interest thereon, the Vendor shall pay the Owner-Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in paragraph 16.1 of Article 16 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

6.3. Reports or Returns. In case any report or return is required to be made with respect to any obligation of the Owner-Trustee under this Article 6 or arising out of this Article 6, the Owner-Trustee shall either make such report or return in such manner as will show the interests of the Vendor in the Equipment or shall promptly notify the Vendor of such requirement and shall make such report or return in such manner as shall be satisfactory to the Vendor. All costs and expenses (including legal and accountants' fees) of preparing any such return or report shall be borne by the Owner-Trustee.

6.4. Survival. All of the obligations of the Owner-Trustee under this Article 6 shall survive and continue, notwithstanding payment in full of all amounts due under this Agreement.

6.5. Article 6 Subject to Articles 4 and 23. The obligations of the Owner-Trustee under this Article 6 are subject to the limitations contained in paragraph 4.9 of Article 4 hereof and in Article 23 hereof.

## ARTICLE 7

## MAINTENANCE; CASUALTY OCCURRENCES

7.1. Maintenance. Subject to the limitations contained in Article 23 hereof, the Owner-Trustee shall, at its own cost and expense, maintain and keep each unit of the Equipment in good operating order and repair, ordinary wear and tear excepted.

7.2. Casualty Occurrences. In the event that any unit of Group A, B or C Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessee, irreparably damaged, from any cause whatsoever or the Purchase Price of any unit shall have been refunded by the Builder pursuant to its patent indemnities therefor as set forth in Item 4 of Annex A hereto or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period or by any other governmental entity resulting in loss of possession by the Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called Casualty Occurrences), the Owner-Trustee shall, promptly after it shall have received notice from the Lessee or otherwise been informed that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Group A, B or C Payment Date, as the case may be (or, if such Casualty Occurrence occurs prior to the first date for payment of interest on the Conditional Sale Indebtedness in respect of the Group A Equipment, on the first date for the payment of such interest or if notice of such Casualty Occurrence is received by the Owner-Trustee within 15 days of such next succeeding Group A, B or C Payment Date [and the Lessee shall not have exercised the option provided in the second sentence of § 7.1 of the Lease] or such interest payment date on the applicable Payment Date following such next succeeding Payment Date or such interest payment date), the Owner-Trustee shall, subject to the limitations contained in paragraph 4.9 of Article 4 hereof, pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit of Group A, B or C Equipment, as the case may be, suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay without penalty or premium, ratably in accor-

dance with the unpaid balance of each instalment, the Group A Conditional Sale Indebtedness if such Casualty Occurrence is to a unit of Group A Equipment, the Group B Conditional Sale Indebtedness if such Casualty Occurrence is to a unit of Group B Equipment or the Group C Conditional Sale Indebtedness if such Casualty Occurrence is to a unit of Group C Equipment. The Owner-Trustee will promptly cause to be furnished to the Vendor and the Lessee a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor and the Lessee may request, calculated as provided in paragraph 4.4 of Article 4 hereof.

7.3. Obligations upon Payment of Casualty Value.

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

7.4. Casualty Value. The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof referred to in paragraph 4.3(b) of Article 4 hereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of the Group A, B or C Equipment, as the case may be, made pursuant to Article 4 hereof shall be deemed to be a payment with respect to each unit of the Group A, B or C Equipment, as the case may be, in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the the Group A, B or C Equipment, as the case may be.

ARTICLE 8

INSURANCE PROCEEDS AND CONDEMNATION PAYMENTS

If the Vendor shall receive any insurance proceeds

or condemnation payments in respect of such units suffering a Casualty Occurrence the Vendor shall promptly pay such insurance proceeds or condemnation payments to the Owner-Trustee; provided, however, that no event of default shall have occurred and be continuing hereunder and the Owner-Trustee shall have made payment of the Casualty Value of such units to the Vendor. All insurance proceeds received by the Vendor in respect of any unit or units of Equipment not suffering a Casualty Occurrence shall be paid to the Owner-Trustee upon proof satisfactory to the Vendor that any damage to such unit in respect of which such proceeds were paid has been fully repaired.

## ARTICLE 9

### REPORTS AND INSPECTIONS

On or before March 31 in each year, commencing with the year 1977, the Owner-Trustee shall, subject to the provisions of Article 23 hereof, cause to be furnished to the Vendor an accurate statement (a) setting forth as at the preceding December 31 the total number, description and road numbers of all units of the Equipment then subject to this Agreement, the total number, description and road numbers of all units of the Equipment that have suffered a Casualty Occurrence or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) during the preceding calendar year and setting forth such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 10 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Owner-Trustee's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

## ARTICLE 10

### MARKING OF EQUIPMENT

10.1. Marking of Equipment. The Owner-Trustee will cause each unit of the Equipment to be kept numbered with the road number of the Lessee as set forth in Annex B

hereto, or, in the case of Equipment not there listed, such road number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's interest in the Equipment and its rights under this Agreement. The Owner-Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. The Owner-Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded and deposited by or on behalf of the Owner-Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

10.2. No Designations of Ownership. Except as provided in paragraph 10.1 of this Article, the Owner-Trustee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Equipment may be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates.

10.3. Article 10 Subject to Article 23. The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

## ARTICLE 11

### COMPLIANCE WITH LAWS AND RULES

11.1. Compliance with Laws and Rules. During the term of this Agreement, the Owner-Trustee 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 lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the United States Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of or to any part on any unit of the Equipment, the Owner-Trustee will or will cause the Lessee to conform therewith at no expense to the Vendor; provided, however, that the Owner-Trustee or the Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

11.2. Article 11 Subject of Article 23. The obligations of the Owner-Trustee under this Article are subject to the limitations contained in Article 23 hereof.

## ARTICLE 12

### POSSESSION AND USE

12.1. Possession and Use of Equipment by Owner-Trustee. The Owner-Trustee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Owner-Trustee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

12.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. The Owner-Trustee simultaneously is leasing the Equipment to the Lessee as provided in the Lease, and the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of the Vendor.

12.3. Other Leases of Equipment. Subject to the

rights of the Lessee under the Lease, the Owner-Trustee may also lease the Equipment to any other railroad company, but only with the prior written consent of the Vendor, which consent may be subject to the conditions, among others, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) such lease shall be assigned to the Vendor as security on terms consistent with those set forth in Annex D hereto, and in any event satisfactory to the Vendor.

## ARTICLE 13

### PROHIBITION AGAINST LIENS

13.1. Owner-Trustee to Discharge Liens. The Owner-Trustee will pay or discharge any and all sums claimed by any party from, through or under the Owner-Trustee or its successors or assigns which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, equal or superior to the Vendor's security interest therein, and will promptly discharge any such lien, charge or security interest which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

13.2. No Breach for Certain Liens. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

13.3. Article 13 Subject to Article 23 Except in Certain Instances. The obligations of the Owner-Trustee

under this Article 13 are subject to the limitations contained in Article 23 hereof; provided, however, that the Owner-Trustee will pay or discharge any and all claims, liens, charges or security interests claimed by any party from, through or under the Owner-Trustee or the Owners or the successors or assigns of either of them, not arising out of the transactions contemplated hereby (but including tax liens arising out of the receipt of the income and proceeds from the Equipment), equal or superior to the Vendor's security interest therein, but the Owner-Trustee shall not be required to pay or discharge any such claim, lien, charge or security interest so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not adversely affect the security interest of the Vendor in or to the Equipment or otherwise under this Agreement.

#### ARTICLE 14

##### INDEMNITIES AND WARRANTIES

14.1. Indemnification. The Owner-Trustee shall pay, and shall protect, indemnify and hold the Vendor and any assignee hereof, and their respective successors, assigns, agents and servants (hereinafter called Indemnified Persons), harmless from and against any and all causes of action, suits, penalties, claims, demands or judgments, of any nature whatsoever which may be imposed on, incurred by or asserted against any Indemnified Person (including any or all liabilities, obligations, damages, costs, disbursements, expenses [including without limitation attorneys' fees and expenses of any Indemnified Person] relating thereto) in any way relating to or arising, or alleged to arise out of this Agreement or the Equipment, including without limitation those in any way relating to or arising or alleged to arise out of (i) the manufacture, construction, purchase, acceptance, rejection, ownership, delivery, nondelivery, lease, possession, use, operation, condition, sale, return or other disposition of any unit of Equipment or portion thereof, (ii) any latent and other defects whether or not discoverable by the Owner-Trustee or the Vendor, (iii) any claim for patent, trademark or copyright infringement, (iv) any claims based on strict liability in tort, (v) any injury to or the death of any person or any damage to or loss of property on or near the Equipment or in any manner growing out of or concerned with, or alleged to grow out of or be connected with, the owner-

ship, use, replacement, adaptation or maintenance of the Equipment or of any other equipment in connection with the Equipment (whether owned or under the control of the Owner-Trustee, the Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation, or alleged violation, of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of the Vendor's retention of a security interest under this Agreement or the Lease Assignment; except that the Owner-Trustee shall not be liable to the Builder in respect of any of the foregoing matters to the extent liability in respect thereof arises from an act or omission of the Builder or is covered by the Builder's patent indemnification referred to in paragraph 14.4 of this Article 14. The Owner-Trustee shall be obligated under this Article 14, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same manner under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against the Owner-Trustee under this Article 14 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, the Owner-Trustee may and, upon such Indemnified Person's request, will at the Owner-Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by the Owner-Trustee and approved by such Indemnified Person and, in the event of any failure by the Owner-Trustee to do so, the Owner-Trustee shall pay all costs and expenses (including without limitation attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event the Owner-Trustee is required to make any payment under this Article 14, the Owner-Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount

of such payment. The Vendor and the Owner-Trustee each agrees to give each other promptly upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 14 by the Owner-Trustee, and provided that no event of default set forth in paragraph 16.1 of Article 16 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than the Lessee) as a result of any matter with respect to which such Indemnified Person has been indemnified by the Lessee pursuant to the Lease shall be paid over to the Owner-Trustee to the extent necessary to reimburse the Owner-Trustee for indemnification payments previously made in respect of such matter.

14.2. Survival; No Subrogation. The indemnities contained in this Article 14 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by any Indemnified Person. None of the indemnities in this Article 14 shall be deemed to create any rights of subrogation in any insurer or third party against the Owner-Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

14.3. Owner-Trustee Not Released if Equipment Damaged or Lost. The Owner-Trustee 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.

14.4. Warranty of Builder; Patent Indemnity; Subject to Article 23. The agreement of the parties relating to the Builder's warranty of material and workmanship and the agreement of the parties relating to patent indemnification are set forth in Items 3 and 4 of Annex A hereto. The obligations of the Owner-Trustee pursuant to paragraphs 14.1, 14.2 and 14.3 of this Article are subject to the provisions of Article 23 hereof.

## ARTICLE 15

## ASSIGNMENTS

15.1. Assignment of Owner-Trustee. Except as provided in the Trust Agreement, the Owner-Trustee will not (a) except as provided in Article 12 hereof, 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.

15.2. Assignment by Vendor. All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Owner-Trustee, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 14 hereof, or relieve the Owner-Trustee of its obligations to the Builder contained in Articles 2, 3, 4, 6 and 14 hereof, Annex A hereto and this Article 15, or any other obligation which, according to its terms or context, is intended to survive an assignment.

15.3. Notice of Assignment by Vendor. Upon any such assignment, either the assignor or the assignee shall give written notice to the Owner-Trustee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Owner-Trustee of the notification of any such assignment, all payments thereafter to be made by the Owner-Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

15.4. No Set-Off Against Conditional Sale Indebtedness Upon Assignment. The Owner-Trustee recognizes that this Agreement will be assigned to the Assignee as provided in the Assignment. The Owner-Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the

purpose of inducing such acquisition, that the rights of the assignee to the entire unpaid Conditional Sale Indebtedness in respect of the or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever by the Owner-Trustee arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Owner-Trustee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Owner-Trustee against and only against the Builder.

15.5. Exclusion of Equipment Not Settled For. If the Builder shall not receive on each Closing Date the aggregate Purchase Price in respect of all of the Equipment proposed to be settled for on such Closing Date, the Builder will promptly notify the Owner-Trustee and the Lessee of such event and, if such amount shall not have been previously paid, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement with the Builder excluding from this Agreement those units of Equipment whose aggregate Purchase Price shall not have been received.

## ARTICLE 16

### DEFAULTS

16.1. Events of Default; Termination of Lease; Declaration of Default; Acceleration of Conditional Sale Indebtedness. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Owner-Trustee shall fail to pay or cause to be paid in full any sum payable by the Owner-Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee) and such default shall continue for 15 days after the date such payment is due and payable; or

(b) the Owner-Trustee or the Lessee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement (irrespective of the provisions of Article 4 or 23 hereof or any other provision of this Agreement limiting the liability of the Owner-Trustee), the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made expressly for the benefit of the Vendor, on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under the Lease shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceeding shall be commenced by or against the Owner-Trustee or the Lessee for any relief which includes, or might result in, any modification of the obligations of the Owner-Trustee hereunder or the Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Owner-Trustee under this Agreement or the Lessee under the Lease shall not have been and shall not continue to have

been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Owner-Trustee or the Lessee, as the case may be, or for their respective property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

then at any time after the occurrence of such an event of default the Vendor may, upon five days' written notice to the Owner-Trustee and the Lessee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) cause the term of the Lease immediately upon such notice to terminate (and the Owner-Trustee acknowledges the right of the Vendor to terminate the term of the Lease), provided, however, that such termination shall not be in derogation of or impair the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to enforce compliance by the Lessee with any of its covenants and agreements under the Lease or to enforce any of its rights and remedies under § 13 of the Lease (subject to the Vendor's rights to repossess and sell the Equipment as provided in this Agreement), including the rights of the Owner-Trustee or the Vendor (under the assignment thereof), as the case may be, to sue for and recover damages provided for in § 13 of the Lease upon the occurrence of an event of default under the Lease, and/or (ii) declare (hereinafter called 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 Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Owner-Trustee, subject to the provisions of Articles 4 and 23 hereof, wherever situated. The Owner-Trustee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of

notice and/or lapse of time could constitute, an event of default under this Agreement.

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

## ARTICLE 17

### REMEDIES

17.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default, the Vendor may, and upon such further notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken, by its agent or agents, immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Owner-Trustee any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the Owner-Trustee, the Lessee or any other person and for such purpose may enter upon the premises of the Owner-Trustee 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-Trustee or the Lessee, subject to all mandatory requirements of due process of law.

17.2. Assembling of Equipment for Vendor. In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points for the delivery of the Equipment to the Vendor, the

Owner-Trustee shall, subject to the provisions of Article 23 hereof, at its own expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any unit or units have been interchanged to return the unit or units so interchanged) place such units upon such storage tracks of the Lessee as the Vendor reasonably may designate;

(b) permit the Vendor to store such units on such tracks without charge for rent or storage until all such units of Equipment have been sold, leased or otherwise disposed of by the Vendor; and

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

During any storage period, the Lessee has agreed pursuant to § 14.1 of the Lease, at its own cost and expense, to insure, maintain and keep each such unit in good order and repair and to permit the inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers 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, the Owner-Trustee acknowledges that upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled under the Lease as assignee of the rights of the Owner-Trustee thereunder to a decree against the Lessee requiring specific performance hereof. The Owner-Trustee hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

17.3. Vendor May Dispose of or Retain Equipment.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 17 provided) may, at its election, retain the Equipment in satisfaction of the entire Conditional Sale Indebtedness and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Owner-Trustee and the Lessee by telegram or registered mail, addressed as provided in Article 22 hereof, and to any

other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Owner-Trustee's rights in the Equipment shall thereupon terminate and all payments made by the Owner-Trustee may be retained by the Vendor as compensation for the use of the Equipment; provided, however, that if the Owner-Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee; provided, further, that if the Owner-Trustee, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall not have given notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 17.

17.4. Vendor May Sell Equipment; Owner-Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Owner-Trustee, the Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of the Owner-Trustee, the Lessee or any other party claiming from, through or under the Owner-Trustee or the Lessee, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Owner-Trustee should tender full payment of the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing,

holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by the Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Owner-Trustee. The proceeds of such sale or other disposition, less the attorneys' fee and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

17.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be in a commercially reasonable manner. The Vendor, the Owner-Trustee or the Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Owner-Trustee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 22 hereof. In addition, 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 rights of the Lessee and the Owner-Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not be accountable to the Owner-Trustee (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of sums due to the Vendor hereunder.

17.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically

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

17.7. Deficiencies. If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Owner-Trustee shall, subject to the limitations of paragraph 4.9 of Article 4 and Article 23 hereof, pay the amount of such deficiency to the Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the rate of 11% per annum, and, if the Owner-Trustee shall fail to pay such deficiency, the Vendor may bring suit therefor and shall, subject to the limitations of paragraph 4.9 of Article 4 and Article 23 hereof, be entitled to recover a judgment therefor against the Owner-Trustee. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Owner-Trustee.

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

fees, and the amount thereof shall be included in such judgment. The foregoing provisions of this paragraph shall be subject to the limitations set forth in paragraph 4.9 of Article 4 and Article 23 hereof.

17.9. Remedies Subject to Mandatory Legal Requirements. The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

## ARTICLE 18

### APPLICABLE STATE LAWS

18.1. Conflict with State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Owner-Trustee 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.

18.2. Waiver of Notices. Except as otherwise provided in this Agreement, the Owner-Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

## ARTICLE 19

### RECORDING

Subject to the provisions of Article 23 hereof, the Owner-Trustee will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded in accordance with Section 20c of

the Interstate Commerce Act and deposited with the Registrar General of Canada (notice of such deposit to be forthwith given in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada; and the Owner-Trustee will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Owner-Trustee will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

#### ARTICLE 20

##### REPRESENTATION AND WARRANTY OF BUILDER

The Builder hereby represents and warrants to the Owner-Trustee, its successors and assigns, that this Agreement is duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Owner-Trustee, this Agreement is, in so far as the Builder is concerned, a legal, valid and existing agreement binding upon the Builder in accordance with its terms.

#### ARTICLE 21

##### ARTICLE AND PARAGRAPH HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

21.1. Article and Paragraph Headings for Convenience Only. All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

21.2 Effect and Modification of Agreement. Except for the Participation Agreement this Agreement, including the Annexes hereto, exclusively and completely states the rights of the Vendor and the Owner-Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or

modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of the Vendor and the Owner-Trustee.

## ARTICLE 22

### NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it by first class mail, postage prepaid, at its chief place of business at the following specified addresses:

(a) to the Owner-Trustee, at 130 John Street, New York, New York 10038, attention of Corporate Trust and Agency Division, with copies to General Electric Credit Corporation at P. O. Box 8300, Stamford, Connecticut 06904, attention of Manager--Operations, Leasing and Industrial Loan Financing and attention of Loan Officer--Rail, to Union Bank & Trust Company, 3643 S. 48th Street, Lincoln, Nebraska 68506 and to Packers National Bank in Omaha, 4939 S. 24th Street, Omaha, Nebraska 68107.

(b) to the Builder, at the address specified in Item 1 of Annex A hereto,

(c) to any assignee of the Vendor, or of the Owner-Trustee, at such address as may have been furnished in writing to the Owner-Trustee, or the Vendor, as the case may be, by such assignee,

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

## ARTICLE 23

### IMMUNITIES; SATISFACTION OF UNDERTAKINGS

23.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorpora-

tor, stockholder, director or officer, as such, past, present or future, of the parties hereto or the Owners, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

23.2 Satisfaction of Certain Covenants. The obligations of the Owner-Trustee under paragraph 7.1 of Article 7, paragraphs 17.2 and 17.7 of Article 17, and under Articles 6, 9, 10, 11, 13, 14 and 19 hereof and any and all obligations at any time arising thereunder shall be deemed satisfied in full in all respects (except, in the case of Article 13 hereof, as set forth in paragraph 13.3 thereof), and be of no further force or effect in so far as they involve personal liability for money or performance or otherwise of the Owner-Trustee, other than out of "income and proceeds from the Equipment" (as defined in paragraph 4.9 of Article 4 hereof), upon the execution and delivery of the Lease (whether or not the Lease shall thereafter be amended, terminated or otherwise modified and irrespective of the genuineness, validity, regulatory or enforceability of the Lease); provided, however, that such covenants and obligations shall be deemed covenants of the Owner-Trustee within the meaning of subparagraphs (a) and (b) of paragraph 16.1 of Article 16 hereof (it being the intention of the parties hereto that neither the Owner-Trustee nor any of its properties shall be subject to any liability for any breach or alleged breach by it of any such covenant or obligation except out of the "income and proceeds from the Equipment", but that any such breach may be made the basis of an event of default under said Article 16). The execution and delivery of the Lease shall be presumed conclusively to have occurred, for the purpose of this Article 23, upon the delivery to the Owner-Trustee by the Vendor of written confirmation to such effect signed by the Vendor. No waiver or amendment of the Lessee's undertakings under the Lease shall be effective unless joined in by the Vendor.

23.3. No Personal Liability of Owner-Trustee. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, undertakings and agreements herein made on the part of the Owner-Trustee are each and every one of them made and intended

not as personal representations, undertakings and agreements by United States Trust Company of New York, including its successors and assigns, or for the purpose or with the intention of binding the said trust company personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by the said trust company solely in the exercise of the powers expressly conferred upon the said trust company as trustee under the Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the said trust company or the Owners except as provided in Section 5.02 of the Trust Agreement or on account of any representation, undertaking or agreement of the Owner-Trustee or the Owners except as provided in Section 5.02 of the Trust Agreement, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Vendor and by all persons claiming by, through or under the Vendor; provided, however, that the Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

#### ARTICLE 24

##### LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and Section 86 of the Railway Act of Canada and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

#### ARTICLE 25

##### EXECUTION

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee pur-

suant to the Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION  
(Electro-Motive Division),

by

  
Vice President

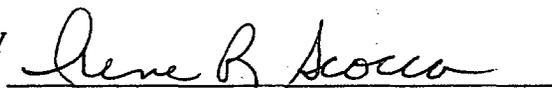
[Corporate Seal]

Attest:

  
Assistant Secretary

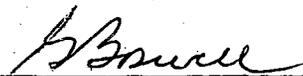
UNITED STATES TRUST COMPANY OF  
NEW YORK, as Trustee,

by

  
Assistant Vice President

[Corporate Seal]

Attest:

  
Assistant Secretary

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

On this *16* day of *February* 1976, before me personally appeared *P. K. HOGLUND*, to me personally known, who, being by me duly sworn, says that he is Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, 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.

*Zula C. Clair*  
\_\_\_\_\_  
Notary Public

My Commission expires

JULY 11, 1976



Annex A

to

Conditional Sale Agreement

- Item 1: General Motors Corporation (Electro-Motive Division), a Delaware corporation, having an address at La Grange, Illinois 60525.
- Item 2: The Group A Equipment may be settled for in three Groups of units of the Equipment on February 24, 1976, March 2, 1976, or March 25, 1976, or such other dates as are agreed upon by the Owner-Trustee, the Builder, the Lessee and the Assignee occurring not later than May 3, 1976; the Group B Equipment shall be settled for in three Groups of units of Equipment after May 3, 1976, but before July 1, 1976, and the Group C Equipment shall be settled for in one Group of units of Equipment on or after July 1, 1976, but on or before December 31, 1976.
- Item 3: The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to the Builder's satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of the Builder's obligation with respect to such defect under this warranty.

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

THERE ARE NO WARRANTIES WITH RESPECT TO MATERIAL AND WORKMANSHIP, EXPRESSED OR IMPLIED, MADE BY

THE BUILDER EXCEPT THE WARRANTIES SET OUT ABOVE.

The Builder further agrees with the Owner-Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver or modification by the Owner-Trustee of any of its rights under this Item 3.

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

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

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

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

- Item 5: The Maximum Purchase Price referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$23,343,923.08.
- Item 6: The Maximum Conditional Sale Indebtedness referred to in Article 4 of the Conditional Sale Agreement to which this Annex A is attached is \$15,173,550.

Annex B

to

Conditional Sale Agreement

Type	Builder's Specifications	Builder's Plant	Quantity	Lessee's Road Numbers (Both Inclusive)	Unit Base Price	Total Base Price	Estimated Time and Place of Delivery
3,000 h.p. diesel-electric Model locomotive Model SD 40-2	8087	La Grange, Illinois	15	BN6708-6722;	\$496,983	\$ 7,454,745	Fridley, Minnesota 2/24/76
			10	BN6723-6732;	\$494,235	\$ 4,942,345	3/2/76
			20	BN6733-6752	\$491,659	\$ 9,833,178	3/25/76
						<u>\$22,230,268</u>	