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INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of February 27, 1976

BETWEEN

WAYNE LACHAPELLE

AND

DETROIT, TOLEDO AND IRONTON RAILROAD COMPANY

AGREEMENT AND ASSIGNMENT

Dated as of February 27, 1976

BETWEEN

WAYNE LACHAPELLE

AND

MANUFACTURERS NATIONAL BANK OF DETROIT,
As Agent

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT, dated as of February 27, 1976, Between Wayne LaChapelle, of 151 West Fort, Detroit, Michigan (hereinafter called the Vendor or Owner, as more particularly set forth in Article 28 hereof), and Detroit, Toledo and Ironton Railroad Company, a Delaware corporation (hereinafter called the Railroad).

WHEREAS, the Owner is concurrently herewith acquiring from the Railroad pursuant to a Bill of Sale dated the date hereof (hereinafter called the Bill of Sale) all of the Railroad's right, title and interest in and to the railroad equipment described in Schedule A attached hereto (hereinafter called the Equipment), including, among other things, all rights with respect to manufacturer's warranties in respect thereof; and

WHEREAS, the Railroad has agreed to repurchase the Equipment on the terms and conditions hereinafter set forth; and

WHEREAS, the Owner and the Railroad have agreed that this Conditional Sale Agreement (hereinafter called the Agreement) shall exclusively and completely state the rights of the Owner and the Railroad with respect to the Equipment, and shall supersede all other agreements, oral or written, between the Vendor and the Railroad with respect to the sale to the Railroad by the Vendor of 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. *Purchase and Sale.* The Owner does hereby sell and deliver the Equipment to the Railroad, and the Railroad hereby purchases from the Owner and accepts delivery of the Equipment, all on the terms and conditions hereinafter provided.

ARTICLE 2. *Inspection and Delivery.* The Railroad hereby acknowledges and accepts delivery by the Owner of all the various units of the Equipment, all of which have been inspected and approved prior to the date hereof by inspectors or other authorized representatives of the Railroad and found to be completely in accordance with this Agreement.

The Railroad hereby assumes with respect to each unit of Equipment the responsibility and risk of loss.

ARTICLE 3. *Purchase Price and Payment.* The total purchase price of each unit of Equipment, aggregating \$4,500,000 exclusive of interest, is as set forth in Schedule A hereof.

The Railroad hereby acknowledges itself to be indebted to the Owner in the amount of and hereby promises to pay to the Owner at such place as the Owner may designate the total purchase price of the Equipment payable in seventeen equal quarterly installments of \$178,571.43, on the first day of each December, March, June and September, beginning December 1, 1976, to and including December 1, 1980, and a payment (hereinafter called the Balloon Payment) in the amount of \$1,464,285.69 on March 1, 1981. In addition to the payments of the total purchase price as hereinafter provided, interest on the balance of the total purchase price of the Equipment from time to time remaining unpaid, at the rate set forth in Schedule B attached hereto, determined on the basis of a 365/366 day year, shall become due and payable by the Railroad to the Vendor quarterly on each June 1, September 1, December 1 and March 1 subsequent to the date of this Agreement, commencing June 1, 1976, to and including the date of payment in full of such purchase price. Such interest shall accrue from the date hereof. If any payment becomes due on a legal holiday, then payment shall be made on the next business day thereafter.

All payments provided for in this Agreement shall be paid 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 and shall be in immediately available funds. The Railroad shall have the right at any time on three days' notice to prepay without penalty or premium the balance of the purchase price in whole, or in partial payments of \$50,000 or multiples thereof, in each case together with interest due at the date of such payment. Any partial prepayment shall be applied first to the Balloon Payment and then to the quarterly installments in the inverse order of their maturities.

ARTICLE 4. *Taxes.* All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor in respect of the amount of any local, state or Federal taxes (other than income, gross receipts, excess profits and similar taxes) or license fees hereafter levied or imposed upon or measured by this Agreement, or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which expenses, taxes and license fees the Railroad assumes and agrees to pay on demand in addition to the purchase price of the Equipment. The Railroad will also pay promptly all taxes and assessments which may be imposed upon the Equipment or for the use or operation thereof by the Railroad or upon the earnings arising therefrom or upon the Owner or Vendor solely by reason of its ownership thereof and will keep at all times each unit of the Equipment free and clear of all taxes and assessments which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment, except the lien of taxes and assessments not due and payable; *provided, however,* that the Railroad shall be under no obligation to pay any taxes, assessments, licenses, charges, fines or penalties of any kind so long as it is contesting in good faith and by appropriate legal proceedings such taxes, assessments, license fees, charges, fines or penalties and the non-payment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such expenses, taxes, assessments, license fees, charges, fines or penalties shall have been charged or levied against the

Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor on presentation of an invoice therefor and any sums of money so paid by the Vendor shall be secured by and under this Agreement as a lien on the Equipment; *provided, however*, that the Railroad shall be under no obligation to reimburse the Vendor for any sums of money so paid, nor shall any such sums of money so paid be secured by and under this Agreement as a lien on the Equipment, unless the Vendor shall, by at least thirty days written notice given to the Railroad of its intention to make any such payment, afford a reasonable opportunity to the Railroad to contest in good faith any such expenses, taxes, assessments, license fees, charges, fines or penalties which may have been so charged or levied against the Vendor.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all of the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as herein provided. Any and all additions to the Equipment and any and all replacements of parts thereof or additions thereto 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.

When and only when the Vendor shall have been paid the full purchase price of all the Equipment together with interest and all other payments as herein provided, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad so to do, will execute a bill or bills of sale of the Equipment transferring its title thereto and property therein to the Railroad or upon its order free

of all liens and encumbrances created hereby and deliver such bill or bills of sale to the Railroad at its address specified in Article 24 hereof, and will execute and deliver at the same place, for recording or for filing 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 Railroad to the Equipment. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver any such bill or bills of sale or to file any certificate of payment in compliance with any law or statute requiring filing of the same, except for failure to execute and deliver such bill or bills of sale or such instrument or instruments within a reasonable time after written demand of the Railroad.

So long and only so long as the Vendor shall not have declared the entire amount of the unpaid purchase price of the Equipment and interest thereon immediately due and payable pursuant to Article 18 hereof, the Vendor authorizes the Railroad, to the exclusion of the Vendor, to exercise in its own name all rights and powers, and to retain any recovery or benefit resulting from the enforcement of any warranty or indemnity, under any agreement or agreements with manufacturers pursuant to which the Equipment was originally acquired by the Railroad.

ARTICLE 6. *Marking of Equipment.* As soon as possible and in no event later than March 1, 1977, and for so long as title to and property in the Equipment is retained by the Vendor, the Railroad will cause each unit of the Equipment to be kept plainly, distinctly, permanently and conspicuously marked on each side thereof in letters not less than one inch in height with appropriate words designated by the Vendor to indicate the limited interest of the Railroad therein, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to the Equipment and its rights under this Agreement.

The Railroad will cause each unit of the Equipment to be kept numbered with the identifying number thereof as set out in Schedule A hereto and will not change or permit the change of numbers of any such units except with the consent of the Vendor and in accordance with a statement of new numbers to be substituted therefor, which consent and statement previously shall have been filed with the Vendor by the Railroad and filed, recorded or deposited in all public offices where this Agreement shall have been filed, recorded or deposited.

Except as provided above, the Railroad will not allow the name of any person, association or corporation to be placed on any of the Equipment as a designation which might be interpreted as a claim of ownership by the Railroad or anyone other than the Vendor; *provided, however*, that the Railroad may cause the Equipment to bear the designation "Detroit, Toledo and Ironton Railroad Company" or "DTI", together with such insignia as the Railroad customarily displays on the side of other railroad equipment owned or leased by the Railroad.

ARTICLE 7. *Maintenance and Repair.* The Railroad will at all times maintain the Equipment or cause it to be maintained in good order and repair without expense to the Vendor.

ARTICLE 8. *Lost or Destroyed Equipment.* In the event that any unit of the Equipment shall be worn out, lost, destroyed, irreparably damaged, requisitioned or otherwise taken or rendered unfit for use from any cause whatsoever (excluding such units which have been on Bad Order, as such term is understood by the railroad industry in the United States) during the continuance of this Agreement (such occurrences being hereinafter called "Casualty Occurrence"), the Railroad shall promptly and fully inform the Vendor in regard thereto. If any unit or units of Equip-

ment suffers a Casualty Occurrence (any unit or units suffering a Casualty Occurrence being hereinafter called Destroyed Equipment), the Railroad shall, with 45 days thereafter, pay into a special non-interest bearing cash collateral account (hereinafter called the First Collateral Account), opened in the name of the Railroad but under the sole control and dominion of the Vendor at the principal office of Manufacturers National Bank of Detroit in Detroit, Michigan, an amount equal to 100% of the then unpaid Indebtedness of the Railroad hereunder applicable to such unit or units of Destroyed Equipment. The Vendor will at all times permit all funds so paid into the First Collateral Account to accumulate until either (i) the funds then deposited in the First Collateral Account have accumulated to \$50,000 or more (in which event \$50,000 of such funds shall be immediately applied to the partial prepayment of the Railroad's Indebtedness to the Vendor hereunder in accordance with the last paragraph of Article 3 hereof) or (ii) March 1 of each year (at which time all funds then deposited in the First Collateral Account will be applied to the partial prepayment of the Railroad's Indebtedness to the Vendor hereunder in accordance with the last paragraph of Article 3 hereof).

In the event that any unit of the Equipment shall be on Bad Order (as defined in the previous paragraph) for a continued period of six months, the Railroad shall promptly and fully inform the Vendor in regard thereto and, within 45 days after the end of such six month period, pay into a special non-interest bearing cash collateral account (hereinafter called the Second Collateral Account; the First Collateral Account and the Second Collateral Account being hereinafter collectively called the Collateral Accounts and sometimes individually a Collateral Account), opened in the name of the Railroad but under the sole control and dominion of the Vendor at the principal office of Manufacturers National Bank of Detroit in Detroit, Michigan, an amount equal to 100% of the then unpaid Indebtedness of the Railroad hereunder applicable to such unit of Equip-

ment. The Vendor shall cause such amount so paid into the Second Collateral Account to remain therein until the earlier of (i) notice from the Railroad to the effect that such unit of Equipment is no longer on Bad Order (in which event the Vendor shall promptly cause such amount to be withdrawn from the Second Collateral Account for payment over to the Railroad) or (ii) the date which is six months from the date as of which such unit of Equipment had been on Bad Order for a period of six months (in which event the Vendor shall cause such amount to be withdrawn from the Second Collateral Account for deposit into the First Collateral Account, and to be treated as provided in the first paragraph of this Article 8 as if a Casualty Occurrence had occurred with respect to such unit of Equipment on such date).

As security for the due and punctual performance of the Railroad's obligations under this Agreement, the Railroad hereby grants to the Vendor a security interest in and to, and lien upon, all amounts from time to time paid into the Collateral Accounts pursuant to this Article 8.

Upon the payment by the Railroad of the requisite amount of funds into the First Collateral Account as aforesaid with respect to a unit of Destroyed Equipment, absolute right to the possession of, title to and property in such Destroyed Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad to do so, will execute a bill or bills of sale or other instrument, as provided in Article 5 hereof, with respect to such Destroyed Equipment.

ARTICLE 9. *Compliance with Laws and Rules.* During the term of this Agreement the Railroad will comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend and with all lawful rules of the Interstate Commerce Commission, Department of Transportation (Federal Railroad Administration) and any other legislative, executive, administra-

tive 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 the alteration of the Equipment, the Railroad will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 10. *Reports and Inspections.* On or before March 1 in each year, the Railroad will furnish to the Vendor an accurate statement showing as at the preceding December 31, the amount, description and Railroad numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have been or become Destroyed Equipment during the preceding calendar year, the numbers of the units then undergoing repairs and awaiting repairs, and such additional information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request. Together with such statement the Railroad will also furnish to the Vendor a statement specifying that, in the case of all Equipment repainted during the preceding calendar year, the marks required by Article 6 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto upon request.

The Railroad will furnish to the Vendor, within 90 days after the end of each fiscal year of the Railroad, a copy of the annual audited report of the Railroad prepared by an independent certified public accountant, and within 30 days after the end of each of its fiscal quarters, unaudited financial statements showing its financial condition at the close of such fiscal quarter and the results of its operations for

the period ended certified by a proper accounting officer of the Railroad. Each such annual report shall be prepared on a Consolidated and consolidating basis, and each such quarterly statement shall be prepared on a Consolidated basis, in accordance with generally accepted accounting principles applied on a consistent basis, and contain an additional certification by a proper accounting officer of the Railroad showing computations with respect to compliance by the Railroad with the covenants contained in Article 17 of this Agreement and to the effect that no Event of Default (as defined in Article 18 hereof) nor any event which with notice or lapse of time or both would constitute an Event of Default has occurred and is continuing or, if an Event of Default or such event has occurred and is continuing, a statement as to the nature thereof and the action the Railroad proposes to take with respect thereto.

The Railroad will furnish to the Vendor as soon as available and in any event within 120 days from the end of each fiscal year of the Railroad, a copy of the Annual Report Form R-1 for such fiscal year filed with the Interstate Commerce Commission by the Railroad.

The Railroad will furnish to the Vendor, as soon as possible and in any event within five days after the occurrence of any Event of Default or event which with notice or lapse of time or both would constitute an Event of Default hereunder, the statement of the chief financial officer of the Railroad setting forth details thereof and the action which the Railroad proposes to take with respect thereto. Upon the occurrence of any Event of Default or event which with notice or lapse of time or both would constitute an Event of Default hereunder, the Railroad will furnish to the Vendor, within 45 days after request therefor, a report with respect to the condition of the Equipment.

The Railroad will furnish to Vendor seven days' written notice prior to instituting any action to contest (i) taxes, assessments, license fees, charges, fines or penalties as provided in Article 4 hereof, (ii) the validity or application

of laws or rules as provided in Article 9 hereof, or (iii) claims upon the Equipment as provided in Article 12 hereof.

ARTICLE 11. *Possession and Use.* The Railroad, so long as there shall not be existing any Event of Default under this Agreement, shall be entitled to the possession and control of the Equipment and the use thereof upon the lines of railroad owned or operated by the Railroad or over which the Railroad has trackage or other operating rights, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Agreement. The Railroad, with the prior consent of the Vendor, may lease the Equipment; *provided, however*, that the rights of the lessee under such lease shall be expressly subordinated to the rights and remedies of the Vendor under this Agreement.

ARTICLE 12. *Prohibition Against Liens.* The Railroad will pay or satisfy and discharge any and all sums claimed by any party to be owing by, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

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

ARTICLE 13. *Indemnities and Assumption of Liability.* The Railroad agrees to indemnify and save harmless the

Owner and the Vendor from and against all loss, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and reasonable expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the purchase price and transfer of title to the Equipment as provided in Article 5 hereof or the termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of and shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all units of the Equipment.

ARTICLE 14. Patent Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Owner and Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Owner or the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design which infringes or is claimed to infringe on any patent or other right. Said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner.

ARTICLE 15. Assignments. Except in the case of the merger or consolidation of the Railroad into or with another Person as is permitted pursuant to Article 17 hereof, or except as provided in Article 11 hereof, the Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, nor transfer possession of any unit of the Equipment to any other firm, person or cor-

poration without first obtaining the written consent of the Vendor to such sale, assignment or transfer.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive, and to accelerate pursuant to Article 18 hereof, the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall relieve the Railroad of its obligations to the Owner under Articles 4, 13 and 14 hereof or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, 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 or a portion, as the case may be, of the assignor's rights, benefits and advantages under this Agreement including all of the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad hereunder shall, to the extent so assigned, be made to or for the account of the assignee in such manner as it may direct.

The Railroad recognizes that it is the custom of railroad equipment vendors to assign agreements of this character and understands that the assignment of this Agreement, or of some or all of the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents and agrees, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement, or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore

provided, the rights of such assignee to the entire unpaid indebtedness in respect of the purchase price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Owner with respect to the Equipment or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Owner or arising out of any other matter whatsoever. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Owner.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Railroad will, whenever requested by such assignee, change or cause the change of the markings to be maintained on each side of each unit of the Equipment so as to indicate the title of such assignee to the Equipment and the rights of such assignee thereunto, such markings to bear such words or legend as shall reasonably be specified by such assignee. The cost of such markings with respect to the first assignee of this Agreement shall be borne by the Railroad. The cost of such markings in connection with any subsequent assignment will be borne by the subsequent assignee.

ARTICLE 16. *Representations and Warranties of the Railroad.* The Railroad represents and warrants as follows:

(a) The Railroad is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has all requisite power and authority, corporate or otherwise, to conduct

its business, to own its properties and to execute and deliver, and to perform all of its obligations under this Agreement.

(b) The execution, delivery and performance by the Railroad of this Agreement have been duly authorized by all necessary corporate action and do not and will not (i) require any consent or approval of the stockholders of the Railroad, (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Railroad or of the charter or by-laws of the Railroad, (iii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Railroad is a party or by which it or its properties may be bound or affected, or (iv) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance of any nature (other than the interest of the Owner pursuant to this Agreement) upon or with respect to any of the properties now owned or hereafter acquired of the Railroad; and the Railroad is not materially in default under any such law, rule, regulation, order, writ, judgment, injunction, decree, determination or award or any such indenture, agreement, lease or instrument.

(c) Except for the recordations of this Agreement referred to in Article 22 and for similar recordations in respect of the release of the encumbrances set forth in Schedule C hereto, no authorization, consent, approval, license, exemption of or filing or registration with any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, is or will be necessary to the valid execution, delivery or performance by the Railroad of this Agreement.

(d) This Agreement constitutes the legal, valid and binding obligation of the Railroad, enforceable against the Railroad in accordance with its terms.

(e) Except for those encumbrances set forth in Schedule C hereto (which encumbrances are being released simultaneously with the receipt by the Railroad of the proceeds of the Bill of Sale), immediately prior to the conveyance of the Equipment pursuant to the Bill of Sale by the Railroad to the Owner the Railroad was the record and beneficial owner of all units of the trust, pledges, liens, security interests and other charges or encumbrances, and the Railroad has conveyed to the Owner good and marketable title to the Equipment.

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Equipment free and clear of all mortgages, deeds of

(f) No property of any kind of the Railroad has been designated for transfer or conveyance, or ~~will be transferred or conveyed~~, to any other person pursuant to the Regional Rail Reorganization Act of 1973 ("RRRA") or the Railroad Revitalization and Regulatory Reform Act of 1976 ("RRRA") (it being understood that the property being referred to in this paragraph (f) does not include any property owned by the Ann Arbor Railroad Company, a Michigan corporation and Subsidiary of the Railroad (hereinafter called Ann Arbor).

can be transferred or conveyed without the Railroad's consent

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(g) The Railroad has taken all steps necessary for it to obtain, on or before May 1, 1976, the following overhead trackage rights over rail lines of the Penn Central Transportation Company ("Penn Central") to be transferred to the Consolidated Rail Corporation ("ConRail") pursuant to the Final System Plan, as defined in the RRRA, between South Charleston, Ohio (Milepost 36.3—Columbus to Indianapolis Main Line) and Miami City Junction, Ohio (Milepost 208.6—Dayton to Cincinnati Main Line) via Xenia and Dayton Union Terminal; thence to Mill (Evendale—Milepost 248.7); between Mill and Rendcombe Junction (Mile-

post 113.1—Richmond Branch) ; thence to Oasis (Louisville & Nashville Connection and Riverfront Running Track Connection; Milepost 119.7—Undercliff Secondary Track) and from Oasis (Louisville & Nashville Connection) 2.1 miles to Front and Smith Streets (Southern Connection Milepost 121.5), and as an alternative route, overhead trackage rights over the portion of the Erie Lackawanna Dayton Branch to be transferred to ConRail between the Railroad's main line at Maitland (Springfield, Ohio Milepost 366.2) and Cold Springs (Milepost 369.6) ; and over the Penn Central Bellefontaine Branch line to be transferred to ConRail between Cold Springs and Dayton (Dayton Union Terminal; Milepost 207.1) and thence to Cincinnati, including the right of the Railroad to construct turnout connection at Maitland, Ohio.

(h) The balance sheet of the Railroad as at December 31, 1974, and the related statement of income and retained earnings of the Railroad for the fiscal year then ended (both prepared on a Consolidated and consolidating basis), certified by Price Waterhouse & Company, independent public accountants (hereinafter called the 1974 Statements), and the balance sheet of the Railroad as at December 31, 1975, and the related statement of income and retained earnings of the Railroad for the fiscal year then ended (both prepared on a Consolidated basis only), duly certified by the chief financial officer of the Railroad (hereinafter called the 1975 Statements), copies of which have been furnished to the Owner, fairly present (subject, in the case of the 1974 Statements, to the exceptions stated in the accountant's report therein and the impact upon such 1974 Statements of the transactions of a Subsidiary of the Railroad involving the sale of assets referred to below ; and subject, in the case of the 1975 Statements, to year-end audit adjustments and to the possible write-off of \$670,000 of receivables from Penn Central arising prior to June 21, 1970), the Consolidated and consolidating (as the case may be) financial condition and

results of the operations of the Railroad for the fiscal years ended on such dates, all in accordance with generally accepted accounting principles applied on a consistent basis (after giving recognition to the impact upon such 1974 Statements of the transactions of a Subsidiary of the Railroad involving the sale of assets referred to below), and since December 31, 1975, there has been no material adverse change in the Consolidated financial condition or results of operations of the Railroad and its Subsidiaries (it being understood and agreed to by the Owner that certain transactions involving the sale of assets of a Subsidiary of the Railroad, as described in a petition of the Railroad filed with the Interstate Commerce Commission on February 9, 1976 in *Ex Parte* 305 will not, upon consummation, constitute a material adverse change in such condition or operations).

(i) There are no actions, suits or proceedings pending or, to the knowledge of the Railroad, threatened against or affecting the Railroad or the properties of the Railroad before any court or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, if determined adversely to the Railroad, would have a material adverse effect on the ~~financial condition, properties, or operations of the Railroad~~ (it being understood that the properties being referred to in this paragraph (i) do not include any properties owned by Ann Arbor).

(j) The information set forth in the first three columns of Schedule A hereto accurately describes the Equipment, and the design, quality and component parts of each unit of the Equipment conform to all Department of Transportation (Federal Railroad Administration) requirements and specifications, and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such units of Equipment as of the date of this Agreement.

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Railroad's ability to perform its obligations under this Agreement and the Bill of Sale

(k) As of the close of business on the date hereof, Ann Arbor and DTI Enterprises, Inc., an Ohio corporation (hereinafter called DTIE), will be the only Subsidiaries of the Railroad (which owns, on the date hereof, 99.94% of the outstanding capital stock of Ann Arbor and 100% of the capital stock of DTIE); all of the capital stock of Ann Arbor and DTIE has been validly issued and is fully paid and non-assessable; and Ann Arbor is presently in reorganization proceedings under Section 77 of the Bankruptcy Act.

ARTICLE 17. *Certain Negative Covenants of the Railroad.* So long as any amount shall remain unpaid hereunder, the Railroad will not, without the prior written consent of the Vendor:

(a) *Investments in Other Persons.* Make any loan or advance to any Person; or purchase or otherwise acquire the capital stock, assets, or obligations of or any interest in, any Person (other than readily marketable direct or indirect obligations of the United States of America and readily marketable commercial paper, rated "A-1" or "P-1" by Moody's or Standard & Poor's Corporation and certificates of time deposit issued by commercial banks operating in the United States of America and having a capital and surplus of not less than \$100,000,000), *provided, however,* that the Railroad may make advances to DTIE, in amounts not exceeding \$50,000 per annum, for the purpose of payment of taxes and other expenses of DTIE.

(b) *Assumptions, Guaranties, Etc. of Indebtedness of Other Persons.* Assume, guarantee, endorse or otherwise become directly or contingently liable (including, without limitation, liable by way of agreement, contingent or otherwise, to purchase, to provide funds for payment, to supply funds to or otherwise invest in the debtor or otherwise to assure the creditor against loss) in connection with any obligation or indebtedness of

any other Person, except guaranties by endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business.

(c) *Dividends, Etc.* Declare or pay any dividends, purchase, redeem, retire, or otherwise acquire for value any of its capital stock now or hereafter outstanding, return any capital to its stockholders as such, or make any distribution of assets to its stockholders as such, except that the Railroad may declare and deliver stock dividends.

(d) *Senior Funded Indebtedness and Capitalized Lease Obligations.* Incur Senior Funded Indebtedness or Capitalized Lease Obligations unless, after such incurrence, the total of the Railroad's Senior Funded Indebtedness plus Capitalized Lease Obligations is an amount no greater than 125% of the Railroad's accumulated net income (less net losses) during the period beginning with the first fiscal quarter of 1976 and ending with the fiscal quarter prior to such incurrence plus \$56,026,799, *provided, however, that*, (i) in each of the years 1976 and 1977, the Railroad may incur Senior Funded Indebtedness and Capitalized Lease Obligations in an annual amount of \$2,500,000, (ii) in no fiscal year may the Railroad incur increases in Senior Funded Indebtedness and Capitalized Lease Obligations in excess of \$4,500,000, and (iii) the aggregate amount of Capitalized Lease Obligations created or incurred in connection with locomotives and freight train cars in any one calendar year shall not exceed an amount equal to 25% of the sum of all Senior Funded Indebtedness and Capitalized Lease Obligations created or incurred in such calendar year.

(e) *Losses.* Permit the aggregate cumulative net loss of the Railroad and its Subsidiaries, on a Consolidated basis, at the end of any fiscal quarter beginning with the first fiscal quarter of 1976 to exceed \$2,000,000. For the purposes of this paragraph, quarterly income

or losses shall be determined from the Railroad's annual audited and quarterly unaudited Consolidated financial statements, *provided, however*, that any adjustment made to such financial statements relating to \$670,000 of receivables from Penn Central, arising prior to June 21, 1970, shall be disregarded in computing net income or loss.

(f) *Mergers, Etc.* Merge into or consolidate with or into, or sell, assign, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, any Person.

ARTICLE 18. *Events of Default.* In the event that one or more of the following events of default (herein called Events of Default) shall occur and be continuing, to wit:

(a) The Railroad shall fail to pay in full for more than five (5) days after the same shall become due and payable hereunder, any sum payable by the Railroad as herein provided in respect of the purchase price of the Equipment or interest thereon; or

(b) Any representation or warranty made by the Railroad herein or by the Railroad (or any of its officers) in any certificate, agreement, instrument or statement contemplated by or made or delivered pursuant to or in connection with this Agreement, shall prove to have been incorrect when made in any material respect; or

(c) The Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept or performed (other than the failure to make payments as provided in subparagraph (a) hereinabove) or to make provision satisfactory to the Vendor for such compliance; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as

said Section 77 may be hereafter amended, shall be filed by or against the Railroad 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) Any proceedings shall be commenced by or against the Railroad for any relief which includes, or might result in, any modification of the obligations of the Railroad hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions, or extensions, and, unless such proceeding 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 Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Railroad or for its property in connection with any such proceeding in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(f) The Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement

or any interest herein; or shall make any unauthorized transfer of the right to possession of any unit of the Equipment; or shall suffer any material unauthorized transfer of the right to possession of units of the Equipment; or

(g) The Railroad shall fail to pay any indebtedness for borrowed money or the deferred purchase price of property or any interest or premium thereon, when due, whether such indebtedness shall become due by scheduled maturity, by required prepayment, by acceleration, by demand or otherwise; or shall fail to perform any term, covenant or agreement on its part to be performed under any agreement or instrument evidencing or securing or relating to any such indebtedness when required to be performed, if the effect of such failure is to accelerate, or to permit the holder or holders of such indebtedness or the trustee or trustees under any such agreement or instrument to accelerate, the maturity of such indebtedness; or

(h) This Agreement, or the Subordination Agreement dated as of February 27, 1976 (hereinafter called the Subordination Agreement) among the Railroad, the Investors and Pennsylvania Company, a Delaware corporation (hereinafter called Pennco), shall, at any time after their respective execution and delivery and for any reason, cease to be in full force and effect or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by any party thereto (other than the Agent or the Investors) or the trustee in bankruptcy of Penn Central, or the Railroad or Pennco (or any of their successors or assigns) shall deny that it has any or further liability or obligation under (as the case may be) this Agreement or the Subordination Agreement or shall fail to comply with its obligations under the Subordination Agreement;

then at any time after the occurrence of such an Event of Default the Vendor may, upon written notice to the Rail-

road, and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare the entire amount of the unpaid purchase price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of the purchase price and such interest shall bear interest from the date of such declaration at the rate set forth in the second paragraph of Schedule B hereto, to the extent legally enforceable, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the purchase price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad wherever situated.

The Vendor may at its election waive any such Event of Default and its consequences and rescind and annul any such declaration by notice to the Railroad in writing to that effect. Upon any such waiver the respective rights of the parties shall be as they would have been if no such default had occurred and no such declaration had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad 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 19. *Remedies.* If an Event of Default shall have occurred, then at any time after the entire unpaid portion of the purchase price shall have been declared immediately due and payable as hereinbefore provided and during the continuance of such Event of Default, the Vendor, to the extent not prohibited by any mandatory requirements of law, may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or any unit thereof,

without liability to return to the Railroad any sums theretofore paid and free from all claims whatever, except as hereinafter in this Article 19 expressly provided, and may remove the same from possession and use of the Railroad and for such purpose may enter upon the Railroad's 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 Railroad, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense forthwith and in the usual manner, cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor, and, at the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and to furnish facilities for its storage as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad 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 units of the Equipment in any reasonable manner.

After taking repossession of the Equipment as hereinabove provided, the Vendor may, at its election and upon

notice to the Railroad to such effect, to the extent not prohibited by any mandatory requirements of law then in force and applicable thereto, retain the Equipment as its own and make such disposition thereof as the Vendor shall deem fit (including, if the Vendor so elects, the leasing of the Equipment on such terms as it shall deem fit), and in such event all the Railroad's rights in the Equipment will thereupon terminate and, to the extent not prohibited by any mandatory requirements of law, all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however,* that, if the Railroad, within 30 days of receipt of notice of the Vendor's election to retain the Equipment for its own use, as hereinafter provided, shall pay or cause to be paid to the Vendor the total unpaid balance of the purchase price of all the Equipment which the Railroad has agreed to purchase hereunder, together with interest thereon accrued and unpaid and all other payments due by the Railroad under this Agreement, then in such event absolute right to the possession of, title to and property in such Equipment shall pass to and vest in the Railroad; or the Vendor, with or without retaking possession thereof, may at its election sell the Equipment, or any unit thereof, free from any and all claims of the Railroad or of any other party claiming by, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine, all subject to and in compliance with any mandatory requirements of law then in force and applicable to such sale; and the proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement. Written notice of the Vendor's election to retain the Equipment for its own use may be given to the Railroad by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof, at any time during a period

of 30 days after the retaking of possession of the Equipment as hereinbefore provided; and if no such notice shall have been given the Vendor shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 19.

To the extent permitted by any mandatory requirements of law then in force and applicable thereto, any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the Equipment to be sold, and in general in such manner as the Vendor may determine in compliance with any such requirements of law, provided that the Railroad shall be given written notice of such sale as provided in any such requirements, but in any event not less than 10 days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 24 hereof. If such sale shall be a private sale permitted by such requirements, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within 10 days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. To the extent not prohibited by any such requirements of law, the Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 19), and in payment of the purchase price therefor the Vendor shall be entitled to the extent not prohibited as aforesaid to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simul-

taneously 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.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to them under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover judgment therefor against the Railroad. 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 Railroad.

The Railroad 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 attorneys' fees, and the amount thereof shall be included in such judgment.

In the event of the assignment of interests hereunder to more than one assignee, each such assignee shall be entitled to exercise all rights of the Vendor hereunder in respect of the Equipment assigned to such assignee, irrespective of any action or failure to act on the part of any other assignee.

The Railroad, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take

possession of the units of Equipment and to sell them and any other requirements as to the time, place and terms of sale thereof, and any other requirements with respect to the enforcement of the Vendor's rights hereunder; except such notices as are expressly required by the terms of this Agreement, and any and all rights of redemption.

ARTICLE 20. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any State, or which by any applicable law of any State would convert this Agreement into any instrument other than an agreement of conditional sale, shall as to such State be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable State law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

ARTICLE 21. *Extension Not a Waiver.* No delay or omission in the exercise of any power or remedy herein provided or otherwise available to the Vendor shall impair or affect the Vendor's right thereafter to exercise the same. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the obligations of the Railroad hereunder. The acceptance by the Vendor of any payment after it shall have become due hereunder shall not be deemed to alter or impair the obligations of the Railroad or the Vendor's rights hereunder with respect to any subsequent payments or default herein.

ARTICLE 22. *Recording.* The Railroad will cause this Agreement and any assignments hereof or of any interests herein, and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be deposited with the Registrar General of Canada in accordance with Section

86 of the Railway Act of Canada; and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file and record and deposit 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 Railroad will promptly furnish to the Vendor certificates or other evidences of such filing and recording and depositing satisfactory to the Vendor.

ARTICLE 23. *Payment of Expenses.* The Railroad will pay on demand all reasonable costs and expenses of the Owner, the first assignee of this Agreement and any other parties acquiring interests in the first assignment by the Vendor of this Agreement incurred in connection with the preparation, printing, execution, delivery, filing and recording of this Agreement, the documents prepared and executed in connection with the first assignment of this Agreement, any documents or instruments supplemental to or amendatory of this Agreement and such first assignment documents, and any other documents or instruments delivered in connection herewith or therewith (all such documents and instruments, including this Agreement, being hereinafter called the Conditional Sale Documents) (including the fees and expenses of counsel for the Owner, of counsel for the first assignee of this Agreement and of counsel for any other parties acquiring interests in the first assignment by the Vendor of this Agreement) and all costs and expenses (if any) of the Vendor in enforcing any of the Conditional Sale Documents as against the Railroad. In addition, the Railroad will pay on demand any and all stamp and other taxes or fees payable or determined to be payable in connection with the execution, delivery, filing or recording of the Conditional Sale Documents or in connection with any payments made by the first assignee of this Agreement pursuant to the first assignment hereof.

ARTICLE 24. *Notice.* Any notice hereunder to the Railroad shall be deemed to have been properly served if delivered or mailed to the Vice President—Administration of the Railroad at One Parklane Boulevard, Detroit, Michigan 48126, or at such other address as may have been furnished in writing to the Vendor by the Railroad. Any notice hereunder to the Owner shall be deemed to be properly served if delivered or mailed to 151 West Fort, Detroit, Michigan 48226, or at such other address as may subsequently be furnished in writing to the Railroad by the Owner. Any notice hereunder to any assignee of the Vendor or of the Railroad shall be deemed to be properly served if delivered or mailed to such assignee at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, by such assignee.

ARTICLE 25. *Article Headings.* All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

ARTICLE 26. *Effect and Modification of Agreement.* Except as herein otherwise provided, this Agreement exclusively and completely states the rights of the Vendor and the Railroad 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 on behalf of the Vendor and the Railroad.

ARTICLE 27. *Law Governing.* This Agreement shall be governed by the laws of the State of Michigan; *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.

ARTICLE 28. *Certain Definitions.* As used in this Agreement, (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

“*Capitalized Lease Obligations*” means the discounted value of rentals payable by the Railroad and its Subsidiaries, on a Consolidated basis, under leases with an original term of three years or more during the remaining term of the leases, discounted to present value by application of a 6% annual discount factor.

“*Consolidated*” refers to the consolidation of accounts of the Borrower and its Subsidiaries (other than Ann Arbor) in accordance with generally accepted accounting principles.

“*Indebtedness*” means, for any corporation, (i) all indebtedness or other obligations of such corporation for borrowed money or for the deferred purchase price of property or services, and (ii) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services the payment or collection of which such corporation has guaranteed (except by reason of endorsement for collection in the ordinary course of business) or in respect of which such corporation is liable, contingently or otherwise, including, without limitation, liable by way of agreement to purchase, to provide funds for payment, to supply funds to or otherwise to invest in such other Person, or otherwise to assure a creditor against loss, and (iii) all indebtedness or other obligations of any other Person for borrowed money or for the deferred purchase price of property or services secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any mortgage, deed of trust, pledge, lien, security interest or other charge or encumbrance upon or in property (including, without limitation, accounts and contract rights) owned by such corporation, whether or not such corporation has assumed or become liable for the payment of such indebtedness or obligations.

“*Owner*” means, both before and after any assignment of any of the rights of the Owner hereunder, Wayne La Chapelle, and any successor or successors for the time

being to the rights, powers, duties and obligations of the Owner hereunder.

“*Person*” means an individual, corporation, partnership, joint venture, trust, or unincorporated organization, or a government or any agency or political subdivision thereof.

“*Senior Funded Indebtedness*” means all Indebtedness (other than Subordinated Indebtedness) of the Railroad and its Subsidiaries, on a Consolidated basis, which matures by its terms more than one year from the date of determination or matures within one year from such date but is unconditionally renewable or extendible, at the option of the debtor, by its terms or by the terms of any instrument or agreement relating thereto, to a date more than one year from such date.

“*Subordinated Indebtedness*” means all Indebtedness of the Railroad which shall have been subordinated in right of payment, upon terms satisfactory to the Vendor, to the obligations of the Railroad hereunder. The Vendor hereby acknowledges that the principal amount of the advances of Pennco to the Railroad as of the date hereof (as specified in, and subordinated to the Indebtedness of the Railroad hereunder pursuant to the terms of, the Subordination Agreement) constitute Subordinated Indebtedness.

“*Subsidiary*” means any corporation of which more than 50% of the outstanding capital stock having ordinary voting power to elect a majority of the Board of Directors of such corporation (irrespective of whether or not at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by the Railroad, by the Railroad and one or more other Subsidiaries, or by one or more other Subsidiaries.

“*Vendor*” means before any assignment of any of his rights hereunder, Wayne LaChapelle, and any successor

or successors for the time being to his rights, powers, duties and obligations, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment.

ARTICLE 29. *Execution.* This Agreement may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of February 27, 1976, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Owner has executed this Agreement and the Railroad, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

Wayne LaChapelle
WAYNE LACHAPELLE

WITNESS:

Thomas F. Jenore

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY

[CORPORATE SEAL]

By *W.P. Shambaugh*
President

ATTEST:

A. Buegler
Secretary

STATE OF MICHIGAN }
 COUNTY OF WAYNE } ss.:

On this 25th day of February, 1976, before me personally appeared WAYNE LaCHAPELLE, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that the execution of the foregoing instrument was his free act and deed.

Jean Reuschau

Notary Public

My Commission Expires: November 8, 1977

STATE OF MICHIGAN }
 COUNTY OF WAYNE } ss.:

On this 25th day of February, 1976, before me personally appeared K. P. SHOEMAKER, to me personally known, who being by me duly sworn, says that he is President of Detroit, Toledo and Ironton Railroad Company, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Jean Reuschau

Notary Public

My Commission Expires: November 8, 1977

SCHEDULE A

Equipment included in Conditional Sale Agreement dated
February 27, 1976, between WAYNE LA CHAPELLE and
DETROIT, TOLEDO and IRONTON RAILROAD COMPANY

No. of Units	Description	D. T. & I. Railroad Numbers (both inclusive)	Purchase Price		Series Sub Total
			Price Per Unit	Total Price	
5	E.M.D. GP-38 (Loco.)	200-204	\$60,620.00	\$303,100.00	<u>\$303,100.00</u>
8	E.M.D. GP-35 (Loco.)	350-357	51,960.00	415,680.00	<u>415,680.00</u>
1	Flat Coil	1000	12,990.00	12,990.00	<u>12,990.00</u>
1	Hopper	1800	3,464.00	3,464.00	
1	Hopper	1804	3,464.00	3,464.00	
1	Hopper	1807	3,464.00	3,464.00	
1	Hopper	1809	3,464.00	3,464.00	
1	Hopper	1812	3,464.00	3,464.00	
1	Hopper	1821	3,464.00	3,464.00	
2	Hopper	1824-1825	3,464.00	6,928.00	
1	Hopper	1830	3,464.00	3,464.00	
4	Hopper	1832-1835	3,464.00	13,856.00	
2	Hopper	1837-1838	3,464.00	6,928.00	
2	Hopper	1842-1843	3,464.00	6,928.00	
1	Hopper	1847	3,464.00	3,464.00	
4	Hopper	1850-1853	3,464.00	13,856.00	
1	Hopper	1859	3,464.00	3,464.00	
1	Hopper	1862	3,464.00	3,464.00	
2	Hopper	1864-1865	3,464.00	6,928.00	
1	Hopper	1868	3,464.00	3,464.00	
2	Hopper	1872-1873	3,464.00	6,928.00	
1	Hopper	1876	3,464.00	3,464.00	
3	Hopper	1878-1880	3,464.00	10,392.00	
1	Hopper	1883	3,464.00	3,464.00	
1	Hopper	1885	3,464.00	3,464.00	
1	Hopper	1887	3,464.00	3,464.00	
5	Hopper	1889-1893	3,464.00	17,320.00	
2	Hopper	1895-1896	3,464.00	6,928.00	
2	Hopper	1898-1899	3,464.00	6,928.00	

SCHEDULE A—(Cont'd)

No. of Units	Description	D. T. & I. Railroad Numbers (both inclusive)	Purchase Price		Series Sub Total
			Price Per Unit	Total Price	
1	Hopper	1905	\$ 3,464.00	\$ 3,464.00	\$
3	Hopper	1909-1911	3,464.00	10,392.00	
3	Hopper	1914-1916	3,464.00	10,392.00	
2	Hopper	1918-1919	3,464.00	6,928.00	
1	Hopper	1926	3,464.00	3,464.00	
2	Hopper	1934-1935	3,464.00	6,928.00	
1	Hopper	1937	3,464.00	3,464.00	
2	Hopper	1940-1941	3,464.00	6,928.00	
2	Hopper	1944-1945	3,464.00	6,928.00	
2	Hopper	1950-1951	3,464.00	6,928.00	
1	Hopper	1953	3,464.00	3,464.00	
1	Hopper	1955	3,464.00	3,464.00	
3	Hopper	1958-1960	3,464.00	10,392.00	
1	Hopper	1962	3,464.00	3,464.00	
1	Hopper	1964	3,464.00	3,464.00	
1	Hopper	1967	3,464.00	3,464.00	
4	Hopper	1971-1974	3,464.00	13,856.00	
2	Hopper	1976-1977	3,464.00	6,928.00	
1	Hopper	1979	3,464.00	3,464.00	
1	Hopper	1981	3,464.00	3,464.00	
3	Hopper	1983-1985	3,464.00	10,392.00	
3	Hopper	1991-1993	3,464.00	10,392.00	
1	Hopper	1995	3,464.00	3,464.00	
2	Hopper	1998-1999	3,464.00	6,928.00	
Sub Total for 89 Open Top Hoppers					<u>308,296.00</u>
20	Gondola	9300-9319	3,897.00	77,940.00	
79	Gondola	9321-9399	3,897.00	307,863.00	
Sub Total for 99 Gondolas					<u>385,803.00</u>
75	C. Hopper	10000-10074	4,979.50	373,462.50	<u>373,462.50</u>
100	C. Hopper	10100-10199	5,412.50	541,250.00	<u>541,250.00</u>
1	C. Hopper	10701	1,299.00	1,299.00	
2	C. Hopper	10703-10704	1,299.00	2,598.00	
2	C. Hopper	10706-10707	1,299.00	2,598.00	
1	C. Hopper	10709	1,299.00	1,299.00	
4	C. Hopper	10711-10714	1,299.00	5,196.00	

SCHEDULE A—(Cont'd)

No. of Units	Description	D. T. & I. Railroad Numbers (both inclusive)	Purchase Price		Series Sub Total
			Price Per Unit	Total Price	
1	C. Hopper	10716	\$ 1,299.00	\$ 1,299.00	\$
2	C. Hopper	10718-10719	1,299.00	2,598.00	
1	C. Hopper	10722	1,299.00	1,299.00	
3	C. Hopper	10726-10728	1,299.00	3,897.00	
3	C. Hopper	10736-10738	1,299.00	3,897.00	
1	C. Hopper	10743	1,299.00	1,299.00	
1	C. Hopper	10747	1,299.00	1,299.00	
1	C. Hopper	10753	1,299.00	1,299.00	
3	C. Hopper	10758-10760	1,299.00	3,897.00	
1	C. Hopper	10762	1,299.00	1,299.00	
2	C. Hopper	10764-10765	1,299.00	2,598.00	
2	C. Hopper	10767-10768	1,299.00	2,598.00	
1	C. Hopper	10772	1,299.00	1,299.00	
1	C. Hopper	10774	1,299.00	1,299.00	
2	C. Hopper	10777-10778	1,299.00	2,598.00	
2	C. Hopper	10781-10782	1,299.00	2,598.00	
2	C. Hopper	10784-10785	1,299.00	2,598.00	
1	C. Hopper	10787	1,299.00	1,299.00	
3	C. Hopper	10789-10791	1,299.00	3,897.00	
2	C. Hopper	10793-10794	1,299.00	2,598.00	
1	C. Hopper	10796	1,299.00	1,299.00	
4	C. Hopper	10798-10801	1,299.00	5,196.00	
1	C. Hopper	10803	1,299.00	1,299.00	
1	C. Hopper	10805	1,299.00	1,299.00	
1	C. Hopper	10807	1,299.00	1,299.00	
1	C. Hopper	10809	1,299.00	1,299.00	
1	C. Hopper	10811	1,299.00	1,299.00	
4	C. Hopper	10816-10819	1,299.00	5,196.00	
1	C. Hopper	10821	1,299.00	1,299.00	
4	C. Hopper	10823-10826	1,299.00	5,196.00	
1	C. Hopper	10828	1,299.00	1,299.00	
1	C. Hopper	10831	1,299.00	1,299.00	
3	C. Hopper	10834-10836	1,299.00	3,897.00	
2	C. Hopper	10843-10844	1,299.00	2,598.00	
2	C. Hopper	10846-10847	1,299.00	2,598.00	
3	C. Hopper	10849-10851	1,299.00	3,897.00	

SCHEDULE A—(Cont'd)

No. of Units	Description	D. T. & I. Railroad Numbers (both inclusive)	Purchase Price		Series Sub Total	
			Price Per Unit	Total Price		
2	C. Hopper	10857-10858	\$ 1,299.00	\$ 2,598.00	\$	
2	C. Hopper	10860-10861	1,299.00	2,598.00		
1	C. Hopper	10863	1,299.00	1,299.00		
1	C. Hopper	10865	1,299.00	1,299.00		
1	C. Hopper	10873	1,299.00	1,299.00		
6	C. Hopper	10878-10883	1,299.00	7,794.00		
2	C. Hopper	10885-10886	1,299.00	2,598.00		
1	C. Hopper	10888	1,299.00	1,299.00		
2	C. Hopper	10896-10897	1,299.00	2,598.00		
Sub Total for 94 Covered Hoppers						<u>122,106.00</u>
7	C. Hopper	10900-10906	1,732.00	12,124.00		
11	C. Hopper	10908-10918	1,732.00	19,052.00		
4	C. Hopper	10920-10923	1,732.00	6,928.00		
2	C. Hopper	10925-10926	1,732.00	3,464.00		
4	C. Hopper	10928-10931	1,732.00	6,928.00		
11	C. Hopper	10935-10945	1,732.00	19,052.00		
8	C. Hopper	10947-10954	1,732.00	13,856.00		
13	C. Hopper	10956-10968	1,732.00	22,516.00		
2	C. Hopper	10970-10971	1,732.00	3,464.00		
2	C. Hopper	10973-10974	1,732.00	3,464.00		
6	C. Hopper	10976-10981	1,732.00	10,392.00		
11	C. Hopper	10983-10993	1,732.00	19,052.00		
3	C. Hopper	10995-10997	1,732.00	5,196.00		
1	C. Hopper	10999	1,732.00	1,732.00		
Sub Total for 85 Covered Hoppers					<u>147,220.00</u>	
5	C. Hopper	11000-11004	2,598.00	12,990.00		
2	C. Hopper	11007-11008	2,598.00	5,196.00		
6	C. Hopper	11010-11015	2,598.00	15,588.00		
6	C. Hopper	11017-11022	2,598.00	15,588.00		
4	C. Hopper	11024-11027	2,598.00	10,392.00		
5	C. Hopper	11029-11033	2,598.00	12,990.00		
1	C. Hopper	11036	2,598.00	2,598.00		
6	C. Hopper	11038-11043	2,598.00	15,588.00		
16	C. Hopper	11045-11060	2,598.00	41,568.00		

SCHEDULE A—(Cont'd)

No. of Units	Description	D. T. & I. Railroad Numbers (both inclusive)	Purchase Price		Series Sub Total
			Price Per Unit	Total Price	
7	C. Hopper	11062-11068	\$ 2,598.00	\$ 18,186.00	\$
16	C. Hopper	11070-11085	2,598.00	41,568.00	
1	C. Hopper	11088	2,598.00	2,598.00	
8	C. Hopper	11090-11097	2,598.00	20,784.00	
1	C. Hopper	11099	2,598.00	2,598.00	
Sub Total for 84 Covered Hoppers					<u>218,232.00</u>
1	Box	13601	1,732.00	1,732.00	
1	Box	13625	1,732.00	1,732.00	
1	Box	13662	1,732.00	1,732.00	
1	Box	13677	1,732.00	1,732.00	
1	Box	13706	1,732.00	1,732.00	
1	Box	13710	1,732.00	1,732.00	
1	Box	13711	1,732.00	1,732.00	
1	Box	13741	1,732.00	1,732.00	
1	Box	13769	1,732.00	1,732.00	
1	Box	13770	1,732.00	1,732.00	
1	Box	13790	1,732.00	1,732.00	
1	Box	13806	1,732.00	1,732.00	
1	Box	13832	1,732.00	1,732.00	
1	Box	13857	1,732.00	1,732.00	
1	Box	13892	1,732.00	1,732.00	
Sub Total for 15 Box Cars					<u>25,980.00</u>
1	Box	15400	3,464.00	3,464.00	
14	Box	15402-15415	3,464.00	48,496.00	
12	Box	15417-15428	3,464.00	41,568.00	
21	Box	15430-15450	3,464.00	72,744.00	
1	Box	15452	3,464.00	3,464.00	
17	Box	15454-15470	3,464.00	58,888.00	
7	Box	15472-15478	3,464.00	24,248.00	
20	Box	15480-15499	3,464.00	69,280.00	
Sub Total for 93 Box Cars					<u>322,152.00</u>
71	Box	16500-16570	3,680.50	261,315.50	
13	Box	16572-16584	3,680.50	47,846.50	
13	Box	16587-16599	3,680.50	47,846.50	

SCHEDULE A—(Cont'd)

<u>No. of Units</u>	<u>Description</u>	<u>D. T. & I. Railroad Numbers (both inclusive)</u>	<u>Purchase Price</u>		<u>Series Sub Total</u>
			<u>Price Per Unit</u>	<u>Total Price</u>	
38	Box	16602-16639	\$ 3,680.50	\$139,859.00	\$
7	Box	16641-16647	3,680.50	25,763.50	
51	Box	16649-16699	3,680.50	187,705.50	
		Sub Total for 193 Box Cars			<u>710,336.50</u>
25	Box	18000-18024	4,113.50	102,837.50	
1	Box	18026	4,113.50	4,113.50	
42	Box	18028-18069	4,113.50	172,767.00	
18	Box	18071-18088	4,113.50	74,043.00	
4	Box	18090-18093	4,113.50	16,454.00	
5	Box	18095-18099	4,113.50	20,567.50	
		Sub Total for 95 Box Cars			<u>390,782.50</u>
1	C. Hopper	80000	3,378.00	3,378.00	<u>3,378.00</u>
9	C. Hopper	80001-80009	1,515.50	13,639.50	<u>13,639.50</u>
18	Caboose	100-117	4,330.00	77,940.00	<u>77,940.00</u>
6	Caboose	120-125	4,330.00	25,980.00	<u>25,980.00</u>
5	Caboose	130-134	4,330.00	21,650.00	<u>21,650.00</u>
6	Caboose	140-145	13,337.00	80,022.00	<u>80,022.00</u>
		GRAND TOTAL			<u><u>\$4,500,000.00</u></u>

SCHEDULE B**Rate of Interest Charged by Vendor**

A fluctuating interest rate per annum equal at all times to 130% of the prime rate of Manufacturers National Bank of Detroit on 90-day loans to responsible and substantial commercial borrowers (Prime Rate) in effect from time to time, each change in such fluctuating interest rate to take effect simultaneously with the corresponding change in the Prime Rate.

The Railroad will pay interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms of this Agreement at the rate of twelve percent (12%) per annum.

SCHEDULE C

Encumbrances on Equipment Prior to Conveyance to Owner

<u>Encumbered Equipment</u>	<u>Creditor</u>	<u>Nature of Encumbrance</u>	<u>Principal</u>	<u>Accrued Interest</u>
5 Diesel Locomotives (Series DT&I 200-204)	Manufacturers National Bank of Detroit (C.S.A. No. 41)	Unpaid Principal Balance and accrued interest on Conditional Sale Agreement	\$24,075.32	\$ 281.08
75 70-ton Covered Hoppers . . . (Series DT&I 10000-10074)	Manufacturers National Bank of Detroit (C.S.A. No. 27)	Unpaid Principal Balance and accrued interest on Conditional Sale Agreement	44,062.80	330.47
100 90-ton Covered Hoppers	Manufacturers National Bank of Detroit (C.S.A. No. 28)	Unpaid Principal Balance and accrued interest on Conditional Sale Agreement	115,200.00	864.00
95 70-ton Hydroframe Box Cars (Series DT&I 18000-18099)	Manufacturers National Bank of Detroit as Trustee and Agent of Various Trusts (C.S.A. No. 29)	Unpaid Principal Balance and accrued interest on Conditional Sale Agreement	188,333.34	2,118.75
193 70-ton Box Cars (Series DT&I 16500-16699)	Continental Illinois National Bank and Trust Co. as Trustee for Various Trusts, (C.S.A. No. 30)	Unpaid Principal Balance and accrued interest on Conditional Sale Agreement	292,500.00	3,290.62
All equipment, property and right-of-way not subject to prior lien except intangibles	Detroit Bank & Trust Co. (formerly Detroit Trust Co.) as trustee for 2¾% DT&I First Mortgage Bonds dated January 1, 1931, as amended by a First Supplemental Indenture dated October 1, 1941, and as further amended by a Second Supple- mental Indenture dated March 1, 1946, due and payable March 1, 1976	Unpaid Principal Balance and accrued interest on mortgage	7,209,000.00	99,123.75

AGREEMENT AND ASSIGNMENT

AGREEMENT and ASSIGNMENT, dated as of February 27, 1976, between Wayne LaChapelle of 151 West Fort, Detroit, Michigan (hereinafter called the Owner) and Manufacturers National Bank of Detroit, a national banking association with a mailing address at 151 West Fort, Detroit, Michigan 48226, acting as Agent under a Finance Agreement dated as of February 27, 1976 (hereinafter called the Finance Agreement) a copy of which has been delivered to the Owner (said Bank, so acting, being hereinafter called the Assignee);

WHEREAS, the Owner and Detroit, Toledo and Ironton Railroad Company, a Delaware corporation (hereinafter called the Railroad), have entered into a Conditional Sale Agreement dated as of February 27, 1976 (hereinafter called the Conditional Sale Agreement) covering the sale, on the conditions therein set forth, by the Owner and the purchase by the Railroad of the railroad equipment described in Schedule A to the Conditional Sale Agreement (said equipment hereinafter called the Equipment);

Now, THEREFORE, this Agreement and Assignment Witnesseth that, in consideration of the sum of \$4,500,000 paid by the Assignee to the Owner, the receipt of which is hereby acknowledged, as well as the mutual covenants herein contained:

SECTION 1. The Owner hereby sells, assigns, transfers and sets over to the Assignee, its successors and assigns:

(a) All the right, title and interest of the Owner in and to the Equipment and each unit thereof, including, without limitation, all rights retained by the Owner with respect to manufacturer's warranties in respect thereof;

(b) All the right, title and interest of the Owner in and to the Conditional Sale Agreement in respect of the Equipment (except for the reimbursement for taxes paid or incurred by the Owner as provided in

Article 4 thereof) and in and to any and all amounts which may become due or owing by the Railroad to the Owner under the Conditional Sale Agreement on account of the Railroad's obligations in respect of the purchase price of the Equipment and interest thereon and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement other than those hereinabove excluded; and

(c) All of the Owner's rights, powers, privileges and remedies under the Conditional Sale Agreement (except as limited by subparagraph (b) of this paragraph);

without any recourse, however, against the Owner for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement, *provided, however*, that this Agreement and Assignment shall not relieve the Railroad from its obligations to the Owner under Articles 13 and 14 of the Conditional Sale Agreement. In furtherance of the foregoing assignment and transfer, the Owner hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney, hereby irrevocably constituted, for the Owner, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Agreement and Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Owner hereby warrants to the Assignee that it has legal title to the Equipment and good and lawful right to sell the Equipment and that such title to the Equipment is free of all claims, liens and encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement.

SECTION 3. The Owner covenants and agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any installment of, or interest on, the unpaid portion of the purchase price or to enforce any provision of the Conditional Sale Agreement, the Owner will save, indemnify and keep harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, set-off, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Owner of any obligation in respect of the Equipment, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Owner. Any and all such obligations shall be and remain enforceable by the Railroad against and only against the Owner and shall not be enforceable against the Assignee or any party or parties in whom title to the Equipment or any unit thereof or any of the rights of the Owner under the Conditional Sale Agreement shall vest by reason of this assignment or of successive assignments or transfers.

SECTION 4. The Owner covenants and agrees that it will cause to be plainly, distinctly, and conspicuously marked on each side of each unit of the Equipment, not later than the time specified in Article 6 of the Conditional Sale Agreement therefor and for so long as required thereby, in letters not less than one inch in height, the following legend:

“OWNED BY A BANK OR TRUST COMPANY UNDER
A SECURITY AGREEMENT FILED UNDER THE
INTERSTATE COMMERCE ACT, SECTION 20c.”

SECTION 5. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Owner hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed and delivered by him for a valid consideration, that it has no reason to believe that the Conditional Sale Agreement is not a validly existing agreement, binding upon the parties thereto in accordance with its terms, and that assuming valid authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, in so far as the Owner is concerned, a valid and existing agreement binding upon the Owner and the Railroad in accordance with its terms and that it is now in force without amendment thereto; and

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

SECTION 7. This Agreement and Assignment shall be governed by the laws of the State of Michigan; *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.

SECTION 8. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement and Assignment is dated as of February 27, 1976,

for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

SECTION 9. All notices hereunder or under the Conditional Sale Agreement to be given to the Assignee shall be deemed to have been properly served if delivered or mailed to the Assignee at 151 West Fort, Detroit, Michigan 48226 or at such other address, as may subsequently be furnished in writing to the Railroad and the Owner by the Assignee.

IN WITNESS WHEREOF, the Owner has executed this Assignment and the Assignee, pursuant to due corporate authority, has caused this instrument to be executed in its corporate name by its duly authorized officers and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

Wayne LaChapelle
WAYNE LACHAPELLE

WITNESS:

Thomas E. Gemore
Alvin J. Maxwell

MANUFACTURERS NATIONAL
BANK OF DETROIT,
as Agent

[CORPORATE SEAL]

By *H. T. Mondak*
Senior Vice President

ATTEST:
H. G. Gaudy
DEPUTY CASHIER *Secretary*

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.:

On this 25th day of February, 1976, before me personally appeared Wayne LaChapelle, to me personally known to be the person described in and who executed the foregoing instrument, and acknowledged that the execution of the foregoing instrument was his free act and deed.

Jean Reuschew

Notary Public

My Commission Expires! November 8, 1977

STATE OF MICHIGAN }
COUNTY OF WAYNE } ss.:

On this 25th day of February, 1976, before me personally appeared M. T. MONAHAN, to me personally known, who being by me duly sworn, says that he is Senior Vice President of Manufacturers National Bank of Detroit, that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by the 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.

Jean Reuschew

Notary Public

My Commission Expires! Nov. 8, 1977

Acknowledgment of Notice of Assignment

Detroit, Toledo and Ironton Railroad Company hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of February 27, 1976.

DETROIT, TOLEDO AND IRONTON
RAILROAD COMPANY

By *W.P. Shambler*

Title: *President*

Attest
K. Kuznetsov
Secy