
CONDITIONAL SALE AGREEMENT

RECORDATION NO. 8240 Filed & Recorded

MAR 17 1976 - 1 35 PM

INTERSTATE COMMERCE COMMISSION

Dated as of March 9, 1976

between

GENERAL MOTORS CORPORATION

and

PIONEER BANK & TRUST COMPANY, AS TRUSTEE

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

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of March 9, 1976, between GENERAL MOTORS CORPORATION, (hereinafter called the "Vendor" or "Builder" as more particularly set forth in Article 23 hereof), and Pioneer Bank & Trust Company, an Illinois banking corporation, as trustee (hereinafter called the "Vendee") under a Trust Agreement dated January 29, 1976, with Pioneer Bank & Trust Company, Northwest National Bank of Chicago, Northbrook Trust & Savings Bank and O'Hare International Bank, N.A., (hereinafter called collectively "Trustors" and individually "Trustor". As used herein, the words "Trustors" and "Trustor" shall include the named Trustors and any assignees or transferees of the interests of the Trustors under the Trust Agreement.)

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

WHEREAS, the Vendee simultaneously with the execution of this Agreement, will lease the Equipment to Chicago, Milwaukee, St. Paul & Pacific Railroad Company (hereinafter called the "Lessee") pursuant to a lease of railroad equipment dated as of the date hereof in substantially the form annexed hereto as Annex C (hereinafter called the "Lease"); and

WHEREAS, the Builder, simultaneously with the execution of this Agreement, will assign certain rights under this Agreement to Girard Trust Bank, as Agent, (hereinafter called the "Agent") for Great American Insurance Company, Dollar Savings Bank, Provident Mutual Life Insurance Company of Philadelphia, The Western Saving Fund Society of Philadelphia and The Glenmede Trust Company, as trustee, (such corporations being hereinafter called the "Investors") under a finance agreement dated as of the date hereof;

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

ARTICLE 1. Construction and Sale. The Builder shall construct the Equipment and will sell and deliver the Equipment to the Vendee, and the Vendee will purchase the Equipment and will accept delivery of and pay for the Equipment as hereinafter provided. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications").

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

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Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at Bensenville, Illinois, transportation costs, if any, prepaid; provided, however, that the Vendee shall have no obligation to accept any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in Section 10.E and 10.F of the Lease.

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

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

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

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

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ARTICLE 4. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Annex A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on the Closing Date (as hereinafter defined in this Article 4) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$11,000,000 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than \$11,000,000 (or such higher amounts as aforesaid).

The Equipment shall be settled for on the Closing Date after delivery to and acceptance by the Vendee. The term "Closing Date" shall mean such date (not earlier than February 11, 1976 and not later than March 31, 1976), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least three business days prior to the Closing Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Chicago or Northbrook, Illinois, are authorized or obligated to remain closed.

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

(a) On the Closing Date with respect to each Group an amount equal to 25% of the aggregate Purchase Price of such Equipment.

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

The installments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion being herein called the "Conditional Sale Indebtedness") shall be payable on each January 1, April 1, July 1, and October 1, commencing July 1, 1976, to and including January 1, 1991 (or if any such date is not a business day the next succeeding business day), each such date being hereinafter called a "Payment Date." The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 12% per annum. Interim interest shall be due from the Closing Date at a rate of .03333% of the Conditional Sale Indebtedness per day and shall be payable, on April 1, 1976, to the extent accrued through March 31, 1976. The first 49 quarterly payments (which payments include the principal

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and interest from April 1, 1976) shall be equal to 2.8166% of the Purchase Price and each of the next ten quarterly payments shall be equal to the percentage of the Purchase Price set forth in Annex B hereto opposite the quarterly payment dates. Such installments shall completely amortize the Conditional Sale Indebtedness and any interest with respect to such Indebtedness.

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

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

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

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 or as a result of the operation of § 13 of the Tax Indemnity Agreement between the Lessor and Lessee dated the date hereof (the "Tax Indemnity Agreement"), the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to a certain agreement and assignment between the Builder and the Agent dated as of the date hereof (such agreement and assignment being hereinafter called the "Assignment" and such assignee being herein called the "Assignee" or the "Vendor" as indicated in Article 23 hereof).

It is agreed that the obligations of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date, of the following conditions, any of which may be waived by the Vendee:

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

(2) the Vendee shall have received a certificate executed by a duly authorized officer of the Lessee to the effect that the warranties and

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

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

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

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

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

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

(i) the Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has the full corporate and legal right and power to enter into the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment and to perform its duties and obligations thereunder and is duly qualified and authorized to do business in each jurisdiction in which its failure to so qualify would have a material adverse impact upon its financial condition or its ability to perform and discharge its obligation under the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment and the charter of the Lessee does not provide any limitation on the term of its existence;

(ii) neither the execution and delivery of the Lease, the Purchase Agreement Assignment or the acknowledgment of the Lease Assignment nor the consummation of the transaction therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof by the Lessee will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Articles of Incorporation or By-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Lessee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default thereunder or will conflict

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with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

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

(iv) the Lessee has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted;

(v) there are no actions, suits or proceedings pending or threatened which, if adversely determined against the Lessee, will materially prevent or interfere with its ability or right to perform its duties and obligations under the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment;

(vi) such counsel knows of nothing which would make it necessary to register the interests of the Vendee in the units of Equipment under this Agreement or the Conditional Sale Indebtedness created pursuant to this Agreement under the Securities Act of 1933, as amended, or under any state "Blue Sky" or securities law or regulations; and

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

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

(7) the Vendee shall have received a duly executed copy of that certain Agreement of Guaranty dated the date hereof among the

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Builder, the Vendor, the Vendee and the Lessee (such agreement being hereinafter called the "Guaranty Agreement");

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

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

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

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 13, 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee and any Trustor for all payments to be made by the Vendee under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as herein defined in this Article 4), and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments when the same is due; *provided, however*, that the failure to make any such payment, such failure continuing for 10 days, shall nonetheless constitute an event of default under Article 15(a) hereof. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee and any Trustor 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 Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights as assignee of the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (x) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the

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Lease, (y) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (z) any and all other payments received by the Vendee or any assignee of the Vendee under § 10 of the Lease, and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (x), (y) and (z) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date such amounts were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (x), (y) and (z) which were received by the Vendee or any assignee of the Vendee prior to a Declaration of Default hereunder and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date on which amounts were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It being further understood that the "income and proceeds from the Equipment" shall in no event include any amount paid to the Agent by the Builder or its assignees pursuant to Section 1(c) of the Guaranty Agreement dated as of the date hereof between the Vendee, the Agent, the Lessee and the Builder. It is further specifically understood and agreed that the failure to make any of the payments under (b) of the third paragraph of this article or any other payments hereunder, such failure continuing for 10 days, for the reasons enumerated in this paragraph constitutes an event of default as defined in Article 15(a). It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the 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 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee or any Trustor for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and shall mark or otherwise indicate full payment of such judgment upon receipt of all amounts payable pursuant to the limitations set forth in this paragraph; provided, that the foregoing sentence shall evidence a release of claims solely against the Vendee or any Trustor and not any other entities which may be liable to the Vendor for such claims.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to the Equipment until the Vendee

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

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

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines, and penalties being hereinafter called the "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. The Vendee assumes and agrees to pay all of such Impositions on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to and accepted by it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which

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might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. Maintenance and Repair; Casualty Occurrences. The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called the "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay, without premium or penalty, the Conditional Sale Indebtedness and the Vendee will, at its own expense, promptly furnish the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be in substantially the same proportion as the quarterly payments under Article 4 hereof.

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

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price attributable to such unit remaining unpaid on the date as of which

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

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

ARTICLE 9. *Marking of Equipment.* The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying 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 both sides of each unit, in letters not less than one inch in height, the following: "Girard Trust Bank, Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's Security Title in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over such unit until such words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any 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 the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

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Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Lessee or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will require every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the 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 of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

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

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So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor), or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Vendee shall not 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. The Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor. Disposal by the Lessee of any unit of Equipment pursuant to a Casualty Occurrence and subsequent to payment of the Casualty Value shall not be deemed a breach of this Article 11.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's Security Title, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the Security Title of the Vendor in or to the 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.

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

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the per-

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formance of this Agreement, the retention by the Vendor of Security Title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when Security Title thereto remains in the Vendor, or the transfer of Security Title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort (including but not limited to claims for negligence and strict liability), breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

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

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

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

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

The Builder further agrees that neither the inspection, as provided in Article 3 hereof, nor any examination nor any acceptance of any units of the Equipment, as provided in said Article 3, shall be deemed as a waiver or modification by the Vendee or the Lessee of any of their rights under this Agreement.

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

The Builder agrees that on the Closing Date it will warrant to the Vendee that at the time of delivery of each unit of the Equipment hereunder it had at such time legal title to such unit and good and lawful right to sell such unit and that title to such units was at such time free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee hereunder and the rights of the

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Lessee under the Lease and that no unit of Equipment will have been delivered to or used by the Lessee or any other person unless it shall have been first duly subjected to this Agreement and the Lease, and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder hereunder; *all subject, however*, to the other provisions hereof and the rights of the Vendee and the Lessee hereunder. The Builder will not deliver any of the Equipment to the Vendee hereunder until this Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from counsel for the Assignee or from counsel for the Lessee that such filing and recordation have occurred).

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

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

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

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

The Builder hereby:

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

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

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

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

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

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

The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebted-

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edness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever 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 Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

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

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

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

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

- (a) If there is no Event of Default outstanding under the Lease, the Vendee shall fail to pay in full any sum payable under this Agreement when payment thereof shall be due hereunder and such default shall continue for 10 days; or
- (b) The Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply

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with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed, or to make provisions satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Vendee, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, subject to the rights of the Lessee set forth in Article 11 hereof, (i) cause the Vendee to terminate the Lease immediately and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid indebtedness in respect of the Purchase Price of the 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 such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Equipment, or, subject to the provisions of Article 4 hereof, out of any property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or re-

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

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

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee shall (subject to the rights of the Lessee set forth in Article 11 hereof), at its own cost, expense and risk, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on lines of the Lessee and shall there deliver the Equipment or cause it to be delivered to the Vendor. The Vendee shall obtain for the Vendor from the Lessee the right to elect, at the option of the Vendor, to keep the Equipment on any of the lines or premises of the Lessee for a period of two years or until the Vendor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose the Vendee agrees to cause the Lessee to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee. The Vendee hereby expressly waives, and agrees to obtain from the Lessee a waiver of, any and all claims against the Vendor and its assigns or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as

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is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Builder and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 30-day period described in the proviso below, pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and otherwise maintaining the Equipment after such Declaration of Default, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Builder, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell it or continue to hold it pending sale as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee, the Builder and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, 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 in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee subject to the rights, if any, of the Lessee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, pre-

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paring for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Builder, the Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Builder, the Vendee and the Lessee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

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

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

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

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

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

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

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

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

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

(a) to the Vendee, 4000 West North Ave., Chicago, Ill. 60639, Attn: Corporate Trust Dept.;

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

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

(d) to the Lessee, at Rm. 746, 516 W. Jackson Blvd., Union Station, Chicago, Ill. 60606, Attn: Vice President, Finance and Accounting;

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the fifth paragraph of Article 14, Article 16 (unless no Event of Default has occurred and is continuing under the Lease) and under Articles 6, 7, 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 7, 8, 9, 10, 11, 12 and 16 of the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof; provided that an Event of Default is also declared under the Lease.

The Vendee shall not waive or agree to any amendment of the Lessee's undertakings under the Lease without the written consent of the Vendor.

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 Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Trustors or on account of any representation, undertaking or agreement of the Vendee or the Trustors, 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

CONDITIONAL SALE AGREEMENT

Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

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

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

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

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

GENERAL MOTORS CORPORATION

[CORPORATE SEAL]

by _____

Attest:

Vice President

Assistant Secretary

PIONEER BANK & TRUST COMPANY,
as trustee as aforesaid

[CORPORATE SEAL]

by _____

Attest:

Vice President

Assistant Secretary

CONDITIONAL SALE AGREEMENT

ANNEX A

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
MP 15 AC	8103	10	434-443	\$339,518.50	\$3,395,185.00	F.O.B. Bensenville, Illinois
		22	444-465	339,476.00	7,468,472.00	
Total						<u>\$10,863,657.00</u>

CONDITIONAL SALE AGREEMENT

ANNEX B

10/88	.....	1.8299
1/89	.....	1.6256
4/89	.....	1.6066
7/89	.....	1.5874
10/89	.....	1.5678
1/90	.....	1.5480
4/90	.....	1.5279
7/90	.....	1.5075
10/90	.....	1.4868
1/91	.....	1.4658

CONDITIONAL SALE AGREEMENT

Dated as of March 9, 1976

between

GENERAL MOTORS CORPORATION

and

PIONEER BANK & TRUST COMPANY, AS TRUSTEE

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

CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of March 9, 1976, between GENERAL MOTORS CORPORATION, (hereinafter called the "Vendor" or "Builder" as more particularly set forth in Article 23 hereof), and Pioneer Bank & Trust Company, an Illinois banking corporation, as trustee (hereinafter called the "Vendee") under a Trust Agreement dated January 29, 1976, with Pioneer Bank & Trust Company, Northwest National Bank of Chicago, Northbrook Trust & Savings Bank and O'Hare International Bank, N.A., (hereinafter called collectively "Trustors" and individually "Trustor". As used herein, the words "Trustors" and "Trustor" shall include the named Trustors and any assignees or transferees of the interests of the Trustors under the Trust Agreement.)

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

WHEREAS, the Vendee simultaneously with the execution of this Agreement, will lease the Equipment to Chicago, Milwaukee, St. Paul & Pacific Railroad Company (hereinafter called the "Lessee") pursuant to a lease of railroad equipment dated as of the date hereof in substantially the form annexed hereto as Annex C (hereinafter called the "Lease"); and

WHEREAS, the Builder, simultaneously with the execution of this Agreement, will assign certain rights under this Agreement to Girard Trust Bank, as Agent, (hereinafter called the "Agent") for Great American Insurance Company, Dollar Savings Bank, Provident Mutual Life Insurance Company of Philadelphia, The Western Saving Fund Society of Philadelphia and The Glenmede Trust Company, as trustee, (such corporations being hereinafter called the "Investors") under a finance agreement dated as of the date hereof;

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

ARTICLE 1. Construction and Sale. The Builder shall construct the Equipment and will sell and deliver the Equipment to the Vendee, and the Vendee will purchase the Equipment and will accept delivery of and pay for the Equipment as hereinafter provided. Each unit of the Equipment shall be constructed in accordance with the specifications referred to in Annex A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder, the Vendee and the Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications").

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

CONDITIONAL SALE AGREEMENT

Notwithstanding anything to the contrary contained in this Agreement, it is understood and agreed that there may be incorporated in each unit of the Equipment a limited number of used components which will be remanufactured by the Builder and will be the equivalent of new components.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of the Equipment to the Vendee at Bensenville, Illinois, transportation costs, if any, prepaid; provided, however, that the Vendee shall have no obligation to accept any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in Section 10.E and 10.F of the Lease.

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

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

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

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

CONDITIONAL SALE AGREEMENT

ARTICLE 4. *Purchase Price and Payment.* The base price or prices per unit of the Equipment are set forth in Annex A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Builder, the Vendee and the Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on the Closing Date (as hereinafter defined in this Article 4) the aggregate of the Purchase Price for which settlement has theretofore been and is then being made under this Agreement, would, but for the provisions of this sentence, exceed \$11,000,000 (or such higher amount as the Vendee may at its option agree to), the Builder (and any assignee of the Builder) will, upon request of the Vendee, enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Vendee as will, after giving effect to such exclusion, reduce such aggregate Purchase Price under this Agreement to not more than \$11,000,000 (or such higher amounts as aforesaid).

The Equipment shall be settled for on the Closing Date after delivery to and acceptance by the Vendee. The term "Closing Date" shall mean such date (not earlier than February 11, 1976 and not later than March 31, 1976), occurring not more than ten business days following presentation by the Builder to the Vendee of the invoice and the Certificate or Certificates of Acceptance for the Equipment and written notice thereof by the Builder to the Lessee, as shall be fixed by the Lessee by written notice delivered to the Vendee and the Vendor at least three business days prior to the Closing Date. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Philadelphia, Chicago or Northbrook, Illinois, are authorized or obligated to remain closed.

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

- (a) On the Closing Date with respect to each Group an amount equal to 25% of the aggregate Purchase Price of such Equipment.
- (b) In 59 consecutive quarterly installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The installments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion being herein called the "Conditional Sale Indebtedness") shall be payable on each January 1, April 1, July 1, and October 1, commencing July 1, 1976, to and including January 1, 1991 (or if any such date is not a business day the next succeeding business day), each such date being hereinafter called a "Payment Date." The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 12% per annum. Interim interest shall be due from the Closing Date at a rate of .03333% of the Conditional Sale Indebtedness per day and shall be payable, on April 1, 1976, to the extent accrued through March 31, 1976. The first 49 quarterly payments (which payments include the principal

CONDITIONAL SALE AGREEMENT

and interest from April 1, 1976) shall be equal to 2.8166% of the Purchase Price and each of the next ten quarterly payments shall be equal to the percentage of the Purchase Price set forth in Annex B hereto opposite the quarterly payment dates. Such installments shall completely amortize the Conditional Sale Indebtedness and any interest with respect to such Indebtedness.

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

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

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

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 or as a result of the operation of § 13 of the Tax Indemnity Agreement between the Lessor and Lessee dated the date hereof (the "Tax Indemnity Agreement"), the Vendee shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 4) that the Vendee will furnish that portion of the Purchase Price for the Equipment as is required under subparagraph (a) of the third paragraph of this Article 4 and that an amount equal to the balance of such Purchase Price shall be paid to the Builder by an assignee of the Builder's right, title and interest under this Agreement pursuant to a certain agreement and assignment between the Builder and the Agent dated as of the date hereof (such agreement and assignment being hereinafter called the "Assignment" and such assignee being herein called the "Assignee" or the "Vendor" as indicated in Article 23 hereof).

It is agreed that the obligations of the Vendee to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 4 with respect to the Equipment is specifically subject to the fulfillment, on or before the Closing Date, of the following conditions, any of which may be waived by the Vendee:

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

(2) the Vendee shall have received a certificate executed by a duly authorized officer of the Lessee to the effect that the warranties and

CONDITIONAL SALE AGREEMENT

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

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

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

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

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

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

(i) the Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has the full corporate and legal right and power to enter into the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment and to perform its duties and obligations thereunder and is duly qualified and authorized to do business in each jurisdiction in which its failure to so qualify would have a material adverse impact upon its financial condition or its ability to perform and discharge its obligation under the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment and the charter of the Lessee does not provide any limitation on the term of its existence;

(ii) neither the execution and delivery of the Lease, the Purchase Agreement Assignment or the acknowledgment of the Lease Assignment nor the consummation of the transaction therein contemplated or the fulfillment of, or compliance with, the terms and provisions thereof by the Lessee will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Articles of Incorporation or By-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Lessee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default thereunder or will conflict

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with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality;

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

(iv) the Lessee has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted;

(v) there are no actions, suits or proceedings pending or threatened which, if adversely determined against the Lessee, will materially prevent or interfere with its ability or right to perform its duties and obligations under the Lease, the Purchase Agreement Assignment and the acknowledgment to the Lease Assignment;

(vi) such counsel knows of nothing which would make it necessary to register the interests of the Vendee in the units of Equipment under this Agreement or the Conditional Sale Indebtedness created pursuant to this Agreement under the Securities Act of 1933, as amended, or under any state "Blue Sky" or securities law or regulations; and

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

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

(7) the Vendee shall have received a duly executed copy of that certain Agreement of Guaranty dated the date hereof among the

CONDITIONAL SALE AGREEMENT

Builder, the Vendor, the Vendee and the Lessee (such agreement being hereinafter called the "Guaranty Agreement");

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

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

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

Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 13, 15 and 16 hereof), it is understood and agreed by the Vendor that the liability of the Vendee and any Trustor for all payments to be made by the Vendee under and pursuant to this Agreement, with the exception only of the payments to be made pursuant to subparagraph (a) of the third paragraph of this Article 4, shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment" (as herein defined in this Article 4), and such payments shall be made by the Vendee only to the extent that the Vendee or any assignee of the Vendee shall have actually received sufficient "income or proceeds from the Equipment" to make such payments when the same is due; *provided, however*, that the failure to make any such payment, such failure continuing for 10 days, shall nonetheless constitute an event of default under Article 15(a) hereof. Except as provided in the next preceding sentence, the Vendor agrees that the Vendee and any Trustor 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 Vendee or any assignee of the Vendee as above provided. In addition, the Vendor agrees and understands that the Vendee (i) makes no representation or warranty, and is not responsible for, the due execution, validity, sufficiency or enforceability of the Lease in so far as it relates to the Lessee (or any document relative thereto) or of any of the Lessee's obligations thereunder and (ii) shall not be responsible for the performance or observance by the Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease; it being understood that as to all such matters the Vendor will look solely to the Vendor's rights under this Agreement against the Equipment and to the Vendor's rights as assignee of the Lease against the Lessee and the Equipment. As used herein the term "income and proceeds from the Equipment" shall mean (i) if one of the events of default specified in Article 15 hereof shall have occurred and while it shall be continuing, so much of the following amounts as are indefeasibly received by the Vendee or any assignee of the Vendee at any time after any such event and during the continuance thereof: (x) all amounts of rental and amounts in respect of Casualty Occurrences (as hereinafter defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the

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Lease, (y) any and all payments or proceeds received by the Vendee or any assignee of the Vendee for or with respect to the Equipment as the result of the sale, lease or other disposition thereof and after deducting all costs and expenses of such sale, lease or other disposition, and (z) any and all other payments received by the Vendee or any assignee of the Vendee under § 10 of the Lease, and (ii) at any other time, only that portion of the amounts referred to in the foregoing clauses (x), (y) and (z) as are indefeasibly received by the Vendee or any assignee of the Vendee and as shall equal the portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date such amounts were required to be paid to it pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement; it being understood that "income and proceeds from the Equipment" shall in no event include amounts referred to in the foregoing clauses (x), (y) and (z) which were received by the Vendee or any assignee of the Vendee prior to a Declaration of Default hereunder and which exceeded the amounts required to discharge that portion of the Conditional Sale Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on, or within 10 days after, the date on which amounts were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease. It being further understood that the "income and proceeds from the Equipment" shall in no event include any amount paid to the Agent by the Builder or its assignees pursuant to Section 1(c) of the Guaranty Agreement dated as of the date hereof between the Vendee, the Agent, the Lessee and the Builder. It is further specifically understood and agreed that the failure to make any of the payments under (b) of the third paragraph of this article or any other payments hereunder, such failure continuing for 10 days, for the reasons enumerated in this paragraph constitutes an event of default as defined in Article 15(a). It is further specifically understood and agreed that nothing contained herein limiting the liability of the Vendee shall derogate from the right of the Vendor to proceed against the 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 15 hereof, the Vendor agrees that in the event it shall obtain a judgment against the Vendee or any Trustor for an amount in excess of the amounts payable by the Vendee pursuant to the limitations set forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph and shall mark or otherwise indicate full payment of such judgment upon receipt of all amounts payable pursuant to the limitations set forth in this paragraph; provided, that the foregoing sentence shall evidence a release of claims solely against the Vendee or any Trustor and not any other entities which may be liable to the Vendor for such claims.

ARTICLE 5. Title to the Equipment. The Vendor shall and hereby does retain the full security title to the Equipment until the Vendee

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

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

ARTICLE 6. *Taxes.* All payments to be made by the Vendee hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income taxes, gross receipts taxes [except gross receipt taxes in the nature of or in lieu of sales, use or rental taxes], franchise taxes measured by net income based upon such receipts, excess profits taxes and similar taxes) or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines, and penalties being hereinafter called the "Impositions") hereafter levied or imposed upon or in connection with or measured by this Agreement or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof. The Vendee assumes and agrees to pay all of such Impositions on demand. The Vendee will also pay promptly all Impositions which may be imposed upon the Equipment delivered to and accepted by it or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which

CONDITIONAL SALE AGREEMENT

might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; *provided, however*, that the Vendee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the title, property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Vendee shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; *provided, however*, that the Vendee shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Vendee shall have approved the payment thereof.

ARTICLE 7. *Maintenance and Repair; Casualty Occurrences.* The Vendee agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Vendee or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called the "Casualty Occurrences"), the Vendee shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in regard thereto. On the next succeeding Payment Date, the Vendee shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined in this Article 7) of such unit suffering a Casualty Occurrence as of the date of such payment and shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay, without premium or penalty, the Conditional Sale Indebtedness and the Vendee will, at its own expense, promptly furnish the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 4 hereof, so that the remaining payments shall be in substantially the same proportion as the quarterly payments under Article 4 hereof.

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

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price attributable to such unit remaining unpaid on the date as of which

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

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

ARTICLE 9. Marking of Equipment. The Vendee will cause each unit of the Equipment to be kept numbered with the identifying number as set forth in Annex A hereto, or, in the case of Equipment not there listed, such identifying 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 both sides of each unit, in letters not less than one inch in height, the following: "Girard Trust Bank, Agent, Security Owner" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's Security Title in the Equipment and its rights under this Agreement. The Vendee will not permit any such unit to be placed in operation or exercise any control or dominion over such unit until such words shall have been so marked on both sides thereof and will replace or will cause to be replaced promptly any such words which may be removed, defaced or destroyed. The Vendee will not permit the identifying number of any 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 the Vendee in all public offices where this Agreement shall have been filed, recorded and deposited.

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Except as provided in the immediately preceding paragraph, the Vendee will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Vendee may allow the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of the rights of the Lessee or its affiliates to use the Equipment as permitted under the Lease.

ARTICLE 10. *Compliance with Laws and Rules.* During the term of this Agreement, the Vendee will comply, and will require every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessees' operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the 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 of any unit of the Equipment, or in the event that any equipment or appliance on any such unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such unit in order to comply with such laws or rules, the Vendee will make such alterations, changes, replacements and additions at its own expense; *provided, however*, that the Vendee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. *Possession and Use.* The Vendee, so long as an event of default shall not have occurred and be continuing under this Agreement, shall be entitled, from and after delivery of the Equipment by the Builder to the Vendee, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

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

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So long as an event of default specified in Article 15 hereof shall not have occurred and be continuing, the Vendee shall be entitled to the possession and use of the Equipment, and the Equipment may be used upon the lines of railroad owned or operated by the Lessee or any affiliate of the Lessee (or any other railroad company approved by the Vendor), or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights, or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and the Equipment may be used upon connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee, but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Vendee shall not 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. The Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor; *provided, however*, that (i) such lease shall provide that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement (ii) such lessee shall expressly agree not to assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America and (iii) a copy of such lease shall be furnished to the Vendor. Disposal by the Lessee of any unit of Equipment pursuant to a Casualty Occurrence and subsequent to payment of the Casualty Value shall not be deemed a breach of this Article 11.

ARTICLE 12. *Prohibition Against Liens.* The Vendee will pay or discharge any and all sums claimed by any party from, through or under the Vendee or its successors or assigns which, if unpaid, might become a lien, charge, security interest or other encumbrance upon or with respect to the Equipment, or any part thereof, or the interest of the Vendor therein, equal or superior to the Vendor's Security Title, and will promptly discharge any such lien, charge, security interest or other encumbrance which arises, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the Security Title of the Vendor in or to the 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.

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

ARTICLE 13. *Indemnities and Warranties.* The Vendee agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including but not limited to counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the per-

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formance of this Agreement, the retention by the Vendor of Security Title to the Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any of the Equipment, any accident in connection with the operation, use, condition, possession, storage or return of any of the Equipment resulting in damage to property or injury or death to any person during the period when Security Title thereto remains in the Vendor, or the transfer of Security Title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort (including but not limited to claims for negligence and strict liability), breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of Security Title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

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

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

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

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

The Builder further agrees that neither the inspection, as provided in Article 3 hereof, nor any examination nor any acceptance of any units of the Equipment, as provided in said Article 3, shall be deemed as a waiver or modification by the Vendee or the Lessee of any of their rights under this Agreement.

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

The Builder agrees that on the Closing Date it will warrant to the Vendee that at the time of delivery of each unit of the Equipment hereunder it had at such time legal title to such unit and good and lawful right to sell such unit and that title to such units was at such time free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Vendee hereunder and the rights of the

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Lessee under the Lease and that no unit of Equipment will have been delivered to or used by the Lessee or any other person unless it shall have been first duly subjected to this Agreement and the Lease, and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder hereunder; *all subject, however, to the other provisions hereof and the rights of the Vendee and the Lessee hereunder.* The Builder will not deliver any of the Equipment to the Vendee hereunder until this Conditional Sale Agreement and the Lease have been filed and recorded in accordance with Section 20c of the Interstate Commerce Act (the Builder and its counsel being entitled to rely on advice from counsel for the Assignee or from counsel for the Lessee that such filing and recordation have occurred).

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

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

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

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

The Builder hereby:

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

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

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

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

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

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

The Vendee recognizes that it is the custom of railroad equipment manufacturers or sellers to assign agreements of this character and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Vendee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebted-

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edness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever 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 Vendee or the Lessee by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Vendee against and only against the Builder.

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

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

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

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

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

(b) The Vendee shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply

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with any other covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed, or to make provisions satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Vendee for any relief which includes, or might result in, any modification of the obligations of the Vendee hereunder under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations of the Vendee under this Agreement), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), if all the obligations of the Vendee, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Vendee or for its property in connection with any proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Vendee and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, subject to the rights of the Lessee set forth in Article 11 hereof, (i) cause the Vendee to terminate the Lease immediately and/or (ii) declare (herein called a "Declaration of Default") the entire unpaid indebtedness in respect of the Purchase Price of the 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 such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. Upon a Declaration of Default, the Vendor shall be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Equipment, or, subject to the provisions of Article 4 hereof, out of any property of the Vendee wherever situated. The Vendee shall promptly notify the Vendor of any event which has come to its attention which constitutes, or with the giving of notice and/or lapse of time would constitute, an event of default under this Agreement.

The Vendor may, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or re-

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

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

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to the Vendor, the Vendee shall (subject to the rights of the Lessee set forth in Article 11 hereof), at its own cost, expense and risk, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on lines of the Lessee and shall there deliver the Equipment or cause it to be delivered to the Vendor. The Vendee shall obtain for the Vendor from the Lessee the right to elect, at the option of the Vendor, to keep the Equipment on any of the lines or premises of the Lessee for a period of two years or until the Vendor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose the Vendee agrees to cause the Lessee to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Lessee. The Vendee hereby expressly waives, and agrees to obtain from the Lessee a waiver of, any and all claims against the Vendor and its assigns or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as

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is hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Vendee, the Builder and the Lessee by telegram or registered mail, addressed as provided in Article 20 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Vendee's rights in the Equipment shall thereupon terminate and all payments made by the Vendee may be retained by the Vendor as compensation for the use of the Equipment; *provided, however,* that if the Vendee, before the expiration of the 30-day period described in the proviso below, pays or causes to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and otherwise maintaining the Equipment after such Declaration of Default, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee; *provided, further,* that if the Vendee, the Builder, the Lessee or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell it or continue to hold it pending sale as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Vendee, the Lessee, the Builder and any other persons to whom the law may require notice of the time and place, may, subject to the rights of the Lessee set forth in Article 11 hereof, sell the Equipment, or one or more of the units thereof, free from any and all claims of the Vendee or any other party claiming from, through or under the Vendee at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however,* that if, prior to such sale and prior to the making of a contract for such sale, the Vendee should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, 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 in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Vendee subject to the rights, if any, of the Lessee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, pre-

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paring for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at Philadelphia, Pennsylvania, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine, so long as such sale shall be conducted in a commercially reasonable manner. The Builder, the Vendee and the Lessee shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale, it shall be subject to the rights of the Builder, the Vendee and the Lessee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Vendee or the Lessee (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor hereunder.

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

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

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

CONDITIONAL SALE AGREEMENT

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

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

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

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

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

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

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

(a) to the Vendee, 4000 West North Ave., Chicago, Ill. 60639,
Attn: Corporate Trust Dept.;

CONDITIONAL SALE AGREEMENT

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

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

(d) to the Lessee, at Rm. 746, 516 W. Jackson Blvd., Union Station, Chicago, Ill. 60606, Attn: Vice President, Finance and Accounting;

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

ARTICLE 21. Immunities; Satisfaction of Undertakings. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Vendee or the Builder (or Vendor), whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers being forever released as a condition of and as consideration for the execution of this Agreement.

The obligations of the Vendee under the fifth paragraph of Article 14, Article 16 (unless no Event of Default has occurred and is continuing under the Lease) and under Articles 6, 7, 8, 9, 10, 12, 13 and 18 hereof shall be deemed in all respects satisfied by the Lessee's undertakings contained in §§ 5, 6, 7, 8, 9, 10, 11, 12 and 16 of the Lease. The Vendee shall not have any responsibility for the Lessee's failure to perform such obligations, but if the same shall not be performed they shall constitute the basis for an event of default hereunder pursuant to Article 15 hereof; provided that an Event of Default is also declared under the Lease.

The Vendee shall not waive or agree to any amendment of the Lessee's undertakings under the Lease without the written consent of the Vendor.

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 Vendee are each and every one of them made and intended not as personal representations, undertakings and agreements by the Vendee, or for the purpose or with the intention of binding the Vendee personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Vendee solely in the exercise of the powers expressly conferred upon the Vendee as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Vendee, or the Trustors or on account of any representation, undertaking or agreement of the Vendee or the Trustors, 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

CONDITIONAL SALE AGREEMENT

Vendor or any person claiming by, through or under the Vendor, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

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

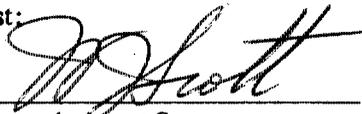
ARTICLE 23. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the party hereto which has manufactured the Equipment and any successor or successors for the time being to its manufacturing properties and business, and, after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

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

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

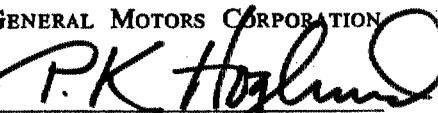
[CORPORATE SEAL]

Attest:


Assistant Secretary

GENERAL MOTORS CORPORATION

by


Vice President

PIONEER BANK & TRUST COMPANY,
as trustee as aforesaid

by


Vice President

[CORPORATE SEAL]

Attest:


Assistant Secretary

CONDITIONAL SALE AGREEMENT

ANNEX A

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
MP 15 AC	8103	10	434-443	\$339,518.50	\$3,395,185.00	F.O.B. Bensenville, Illinois
		22	444-465	339,476.00	7,468,472.00	
Total						<u>\$10,863,657.00</u>

CONDITIONAL SALE AGREEMENT

ANNEX B

10/88	.....	1.8299
1/89	.....	1.6256
4/89	.....	1.6066
7/89	.....	1.5874
10/89	.....	1.5678
1/90	.....	1.5480
4/90	.....	1.5279
7/90	.....	1.5075
10/90	.....	1.4868
1/91	.....	1.4658

ANNEX C
To Conditional Sale Agreement
LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT

Dated as of March 9, 1976

between

**Chicago, Milwaukee, St. Paul &
Pacific Railroad Company**

and

Pioneer Bank & Trust Company, as Trustee

[Covering 32 Diesel-Electric Locomotives]

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

LEASE OF RAILROAD EQUIPMENT

LEASE OF RAILROAD EQUIPMENT, dated as of March 9, 1976, between CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY (hereinafter called the "Lessee") and PIONEER BANK & TRUST COMPANY, an Illinois banking corporation, as trustee (the trustee hereinafter called the "Lessor") under a Trust Agreement dated January 29, 1976, with PIONEER BANK & TRUST COMPANY, NORTHWEST NATIONAL BANK OF CHICAGO, NORTHBROOK TRUST & SAVINGS BANK and O'HARE INTERNATIONAL BANK, N.A. (hereinafter called collectively "Trustors" and individually "Trustor". As used herein, the words "Trustors" and "Trustor" shall include the named Trustors and any assignees or transferees of the interests of the Trustors under the Trust Agreement.)

WHEREAS, the Lessor has entered into a conditional sale agreement dated as of the date hereof (hereinafter called the "Conditional Sale Agreement") with General Motors Corporation (hereinafter called the "Builder"), wherein the Builder has agreed to construct, sell and deliver to the Lessor the railroad equipment described in Schedule A hereto, a copy of which agreement has been delivered to the Lessee;

WHEREAS, the Builder has assigned or will assign its interest in the Conditional Sale Agreement to Girard Trust Bank as agent (hereinafter, together with its successors and assigns, referred to as the "Agent") pursuant to an agreement and assignment (hereinafter called the "Assignment") dated as of the date hereof, between the Builder and the Agent, a copy of which has been delivered to the Lessor and the Lessee;

WHEREAS, the Lessee desires to lease all the units of said equipment, or such lesser number as are delivered and accepted by it on or before March 31, 1976 (hereinafter being called individually a "Unit" and collectively the "Units" or the "Equipment"), at the rentals and for the terms and upon the conditions hereinafter provided;

WHEREAS, to induce the Lessor to purchase the Equipment and lease it to the Lessee and to induce the Agent to acquire an interest in the Conditional Sale Agreement, the Builder has guaranteed certain of the Lessee's obligations under this Lease pursuant to a guaranty agreement dated as of the date hereof between the Builder, the Agent, the Lessor and the Lessee (the "Guaranty Agreement"); and

WHEREAS, to induce the Builder to make the guarantees contained in the Guaranty Agreement, the Lessee has agreed to pay quarterly premium payments (the "Premium Payments") to the Builder pursuant to the Guaranty Agreement;

Now, THEREFORE, in consideration of the premises and of the rentals to be paid and the covenants hereinafter mentioned to be kept and performed by the Lessee, the Lessor hereby leases the Units to the Lessee and the Lessee hereby hires the Units from the Lessor, upon the following terms and conditions, but, upon default of the Lessee hereunder, subject to all the rights and remedies of the Vendor (as defined in the Conditional Sale Agreement), notwithstanding anything in this Lease to the contrary:

§ 1. *Financing.* This Lease provides for the lease by the Lessee from the Lessor of the Units delivered to the Lessor prior to March 31, 1976 such Units to be financed pursuant to a finance agreement among the

LEASE OF RAILROAD EQUIPMENT

Agent and Great American Insurance Company, Dollar Savings Bank, Provident Mutual Life Insurance Company of Philadelphia, The Western Saving Fund Society of Philadelphia and The Glenmede Trust Company, as trustee (hereinafter called the "Investors") dated as of the date hereof.

§ 2. *Delivery and Acceptance of Units.* The Lessor will cause each Unit to be delivered to the Lessee at Bensenville, Illinois. Upon such delivery, the Lessee will cause an inspector of the Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and execute and deliver to the Lessor a certificate of acceptance and delivery (hereinafter called a "Certificate of Delivery"), stating that such Unit has been inspected and accepted on behalf of the Lessee on the date of such Certificate of Delivery and is marked in accordance with §5 hereof, whereupon such Unit shall be deemed to have been delivered to and accepted by the Lessee and shall be subject thereafter to all the terms and conditions of this Lease.

§ 3. *Rentals.* The Lessee agrees to pay or cause to be paid to the Lessor as rental for each Unit subject to this Lease (i) a payment on April 1, 1976 in an amount equal to 3.0709% of the Purchase Price (as defined in the Conditional Sale Agreement and hereinafter called the "Purchase Price") of each Unit settled for under the Conditional Sale Agreement plus an amount equal to 0.03333% of the Purchase Price of each Unit settled for under the Conditional Sale Agreement for each day elapsed from and including the Closing Date (as said term is defined in the Conditional Sale Agreement) with respect to such Unit to and including March 31, 1976 and (ii) 59 consecutive quarterly payments payable January 1, April 1, July 1, October 1 in each year commencing July 1, 1976, in an amount equal to 2.8166% of the Purchase Price of each Unit subject to the Lease on each such date.

All payments provided for in this Lease shall be made for the account of the Lessor, in care of the Agent, at Broad and Chestnut Sts. Philadelphia, Pennsylvania in immediately available funds in Philadelphia; provided that after the Agent shall have notified the Lessee that the Conditional Sale Indebtedness payable under the Conditional Sale Agreement shall have been paid in full, such payments shall be made directly to the Lessor.

This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent, reduction thereof or setoff against rent or any other sums due or owing hereunder or payable by Lessee to any person or entity hereunder, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor under this Lease or against the Builder or any other person or entity, provided that nothing herein shall be deemed to impair the Lessee's right to assert and sue upon such claims in separate actions; nor, except as otherwise expressly provided herein, shall this Lease terminate or the respective obligations of the Lessor or the Lessee be otherwise affected by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Units from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Units, the prohibition of or other restriction against

LEASE OF RAILROAD EQUIPMENT

the Lessee's use of all or any of the Units, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease. To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Units except in accordance with the express terms hereof. Each rental or other payment made by the Lessee hereunder shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor for any reason whatsoever.

§ 4. *Term of Lease.* The term of this Lease as to each Unit shall begin on the date of the delivery to and acceptance by the Lessee of such Unit and, subject to the provisions of §§ 7, 10 and 13 hereof, shall terminate on March 31, 1991.

Notwithstanding anything to the contrary contained herein, all rights and obligations under this Lease and in and to the Units, upon default by the Lessee hereunder, are subject to the rights of the Vendor under the Conditional Sale Agreement. If any event of default should occur under the Conditional Sale Agreement, the Agent may terminate this Lease (or rescind its termination), all as provided therein, unless the Lessee is not in default under this Lease.

§ 5. *Identification Marks.* The Lessee will cause each Unit to be kept numbered with the identifying number set forth in Schedule A hereto, or in the case of any Unit not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Lease to cover such Unit, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on both sides of each Unit, in letters not less than one inch in height, the following: "Girard Trust Bank, Agent, Security Owner", or other appropriate words designated by the Lessor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Lessor's title to and property interest in such Units, the Agent's Security Title (as defined in the Conditional Sale Agreement) to such Unit and the rights of the Lessor under this Lease and of the Agent under the Conditional Sale Agreement. The Lessee will not place any such Unit in operation or exercise any control or dominion over the same until such words shall have been so marked on both sides thereof and will replace promptly any such words which may be removed, defaced or destroyed. The Lessee will not change the identifying number of any Unit except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent and the Lessor and filed, recorded and deposited by the Lessee in all public offices where this

LEASE OF RAILROAD EQUIPMENT

Lease and the Conditional Sale Agreement shall have been filed, recorded and deposited.

The Lessee, at its own expense, will make any changes in the identification marks pursuant to the instructions of the Lessor to permit the Lessor to comply with the fifth paragraph of Article 14 of the Conditional Sale Agreement.

Except as provided in this § 5, the Lessee will not allow the name of any person, association or corporation to be placed on any Unit as a designation that might be interpreted as a claim of ownership; *provided, however,* that the Lessee may allow the Units to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Units as permitted under this Lease.

§ 6. *Taxes.* All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor or Trustors with respect to the amount of any local, state, federal, or foreign taxes (other than any United States federal income tax payable by the Lessor or Trustors in consequence of the receipt of payments provided for herein and other than the aggregate of all state or city income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state and city in which the Lessor or Trustors have its or their principal place of business) or license fees, assessments, charges, fines and penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions") hereinafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof or the Conditional Sale Agreement, all of which Impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. The Lessee will also pay promptly all Impositions which may be imposed upon any Unit or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Unit free and clear of all Impositions which might in any way affect the title of the Lessor or result in a lien upon any such Unit; *provided, however,* that the Lessee shall be under no obligation to pay any Imposition of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Imposition and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement. If any Imposition shall have been charged or levied against the Lessor or Trustors directly and paid by the Lessor or Trustors, the Lessee shall reimburse the Lessor on presentation of an invoice therefor if the Lessor or Trustors shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof.

In the event that the Lessor shall become obligated to make any payment to the Builder or the Agent or otherwise pursuant to Article 6 of the Conditional Sale Agreement not covered by the foregoing paragraph

LEASE OF RAILROAD EQUIPMENT

of this § 6, the Lessee shall pay such additional amounts (which shall also be deemed Impositions hereunder) to the Lessor as will enable the Lessor to fulfill completely its obligations pursuant to said Article 6.

In the event any reports with respect to Impositions involving any Units are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor and the Agent in such Units or notify the Lessor and the Agent of such requirements and make such reports in such manner as shall be satisfactory to the Lessor and the Agent.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any Imposition, pursuant to this § 6, such liability shall continue, notwithstanding the expiration of this Lease, until all such Impositions are paid or reimbursed by the Lessee.

The amount which the Lessee shall be required to pay to the Lessor with respect to any Imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore each Trustor to the same position, after considering the effect of the receipt of such indemnification on its United States federal income taxes and state and city income taxes or franchise taxes based on net income, that it would have been in had such Imposition not been imposed; *provided, however*, that such amount shall be based upon the reasonable opinion of the Lessor and such opinion of Lessor is subject to agreement by Lessee. In the event of disagreement between the parties as to any payment the parties agree to submit the calculation of such amounts to one of the eight largest public accounting firms in the United States, chosen by mutual agreement or, in the absence of agreement, to Arthur Andersen & Co. and such firm shall perform the calculation which will be binding on both parties.

§ 7. *Payment for Casualty Occurrences; Risk of Loss.* In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or, in the opinion of the Lessor or the Lessee, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences") during the term of this Lease, the Lessee shall promptly and fully notify the Lessor and the Agent with respect thereto. On the rental payment date next succeeding the Casualty Occurrence, the Lessee shall pay to the Lessor with respect to such Unit the Casualty Value (as hereinafter defined) of such Unit as of the date of such payment in accordance with Schedule I hereto. Upon the making of such payment by the Lessee in respect of any Unit, the rental for such Unit shall cease to accrue, the term of this Lease as to such Unit shall terminate and the Lessee shall be vested with title to such Unit, without further transfer or action on the part of the Lessor, except that the Lessor, if requested by the Lessee, shall furnish a bill of sale or similar instrument evidencing passage of title in recordable form. The Lessee, at its own expense, will promptly furnish the Lessor a revised schedule of payments of principal and interest thereafter to be made under the Conditional Sale Agreement, in such number of counterparts as the Lessor may request, calculated as provided in Article 7 of the Conditional Sale Agreement.

The Casualty Value of each Unit as of any quarterly rental payment date shall be that percentage of the Purchase Price of such Unit as is set

LEASE OF RAILROAD EQUIPMENT

forth in Schedule I hereto opposite the number of such rental payment date.

The Lessee will bear the responsibility for and risk of any damage to or destruction or loss of any Unit. Except as hereinabove in this § 7 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the responsibility for and the risk of, any damage or Casualty Occurrence to any Unit after delivery to and acceptance thereof by the Lessee hereunder.

The Lessee hereby assigns any and all rights to receive payment in settlement for destruction of any Unit by another carrier (hereinafter called the "Settlement") to the Lessor. The Lessor hereby directs the Lessee to collect and receive such Settlement in trust for the benefit of the Lessor, and, to pay promptly such Settlement over to the Lessor. The Lessor agrees to apply such Settlement, to the extent received, towards the satisfaction of Lessee's obligation to make payment to the Lessor in respect of a Casualty Occurrence of the Unit or Units for which Settlement is made, and the Lessee shall be entitled to any excess of such Settlement over such obligation. In the event that the Lessor receives any insurance proceeds by reason of a Casualty Occurrence, it will credit such proceeds to the Lessee as a payment on account of the Casualty Value of the Units which are the subject of such Casualty Occurrence and, to the extent that the proceeds exceed said Casualty Value to be paid by the Lessee, will remit same to the Lessee. In the event the Lessor receives any condemnation award by reason of a Casualty Occurrence, it will credit such award to the Lessee as payment on account of the Casualty Value of the Units which are subject of such Casualty Occurrence, and the Lessor shall be entitled to retain any excess in the event the award exceeds said Casualty Value. Nothing in this paragraph shall effect Lessee's obligation to make timely payment of the Casualty Value pursuant to the first paragraph of this Section 7.

§ 8. *Annual Reports.* On or before March 31 in each year, but in case of financial statements as promptly thereafter as possible but not later than April 30 in each such year, commencing March 31, 1977, the Lessee will furnish to the Lessor and the Agent (a) an accurate statement setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the Conditional Sale Agreement, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Units as the Lessor or Agent may reasonably request, (b) an accurate statement stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and the markings required by § 5 hereof and Article 9 of the Conditional Sale Agreement have been preserved or replaced, (c) a consolidated annual financial report of the Lessee prepared in accordance with generally accepted accounting principles and audited and certified by a recognized public accounting firm, which shall include, without limitation, a statement of income and retained earnings and a balance sheet, all in reasonable detail and satisfactory in scope to the Lessor, (d) a certificate of an

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officer of the Lessee describing any event during the preceding year which constituted, or with the passage of time will constitute, an Event of Default hereunder or, to the knowledge of the Lessee, an event of default under the Conditional Sale Agreement and, with respect to any event which constituted, or with the passage of time will constitute, an Event of Default, the actions taken, or scheduled to be taken, to correct such event and remedy the Event of Default, and (e) an opinion of counsel for the Lessee that to the best knowledge of such counsel either no additional filings of any nature are required under any federal, state or local law with respect to perfection of title to the Units in the Lessor and the Agent's Security Title (as defined in the Conditional Sale Agreement) or that all requisite filings, specifying same, have been duly made and are in full force and effect. The Lessor and the Agent shall have the right, by their agents, to inspect the Units and the Lessee's records with respect thereto at such reasonable times as the Lessor or the Agent may request during the continuance of this Lease.

§ 9. *Disclaimer of Warranties; Compliance with Laws and Rules; Maintenance; Indemnification.* **THE LESSEE TAKES EACH UNIT HEREUNDER AS IS. THE LESSOR MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN, THE UNITS DELIVERED TO THE LESSEE HEREUNDER, AND THE LESSOR MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF,** it being agreed that all such risks, as between the Lessor and the Lessee, are to be borne by the Lessee; and so long as an Event of Default is not continuing hereunder, the Lessor shall and does hereby irrevocably appoint and constitute the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce from time to time, in the name of and for account of the Lessor and/or the Lessee, as their interests may appear, at the Lessee's sole cost and expense, whatever claims and rights the Lessor may have under the provisions of Article 13 of the Conditional Sale Agreement. The Lessee's delivery of a Certificate of Delivery shall be conclusive evidence as between the Lessee and the Lessor that all Units described therein are in all the foregoing respects satisfactory to the Lessee, and the Lessee will not assert any claim of any nature whatsoever against the Lessor or any Trustor based on any of the foregoing matters.

The Lessee agrees, for the benefit of the Lessor and the Agent, to comply, and require every user of a Unit to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all laws of the jurisdictions in which its or such user's operations involving the Units may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Units, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that such laws or rules require any alteration of any Unit, or in

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the event that any equipment or appliance on any such Unit shall be required to be changed or replaced, or in the event that any additional or other equipment or appliance is required to be installed on any such Unit in order to comply with such laws or rules, the Lessee will make such alterations, changes, replacements and additions, at its own expense; *provided, however*, that 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 Lessor or the Agent, adversely affect the property or rights of the Lessor or the Agent under this Lease or under the Conditional Sale Agreement.

The Lessee agrees that, at its own cost and expense, it will maintain and keep each Unit in good order and repair.

The Lessee shall make no improvements or additions to any Unit other than those provided above and except communications, signal and automatic control equipment or devices having a similar use which are owned by the Lessee and readily removable without causing material damage to the Units.

The Lessee agrees to defend, indemnify, protect and hold harmless the Lessor, the Trustors and the Agent and their respective successors and assigns from and against all losses, damages, injuries, liabilities, claims, demands, costs, charges and expenses whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, royalty payments and expenses, patent liabilities, penalties and interest arising out of or as the result of the entering into or the performance of the Conditional Sale Agreement or this Lease, the ownership of any Unit (including without limitation the retention by the Agent of Security Title to any Unit), the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, construction, storage or return of any Unit or any design, system, process, formula, combination, article or material used or contained therein or in the construction thereof or any accident in connection with the operation, use, condition, possession, storage or return of any Unit resulting in damage to property or injury or death to any person, whether as a result of negligence, the application of the laws of strict liability, or otherwise except as otherwise provided in § 14 of this Lease. The indemnities arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease or the termination of this Lease. The indemnities required to be paid by the Lessee to the Lessor under this paragraph shall be of an amount sufficient to restore each Trustor to the same position, after considering the effect of the receipt of such indemnities on its United States federal income taxes and state and city income taxes or franchise taxes based on net income that it would have been in had the indemnities not been required; *provided, however*, that such amount shall be based upon the reasonable opinion of Lessor and such opinion of Lessor is subject to agreement by Lessee. In the event of disagreement between the parties as to any payment the parties agree to submit the calculation of such amounts to one of the eight largest public accounting firms in the United States, chosen by mutual agreement or, in the absence of agreement, to Arthur Andersen & Co. and such firm shall perform the calculation which will be binding on both parties.

In addition and without limiting the preceding paragraph, the Lessee

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agrees to defend, indemnify, protect and hold harmless the Builder and the Lessor 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 Builder or the Lessor because of the use in or about the construction or operation of the Equipment or any part thereof, of any design specified by the Lessee and not developed or purported to be developed by the Builder, or article or material specified by the Lessee and not manufactured by the Builder, which infringes or is claimed to infringe on or which is claimed to constitute contributory infringement with respect to any patent or other right. The term "design" wherever used in this Lease or in any assignment of this Lease shall be deemed to include formulae, systems, processes and combinations.

The Lessee agrees to prepare and deliver to the Lessor within a reasonable time prior to the required date of filing (or, to the extent permissible, file on behalf of the Lessor) any and all reports (other than income tax returns) to be filed by the Lessor with any federal, state or other regulatory authority by reason of the ownership by the Lessor or the Agent of the Units or the leasing thereof to the Lessee.

§ 10. *Default.* If one or more of the following events (each such event being hereinafter sometimes called an "Event of Default") shall occur and be continuing:

A. default shall be made in payment of any part of the rental provided in § 3 hereof, in the payment of Casualty Value under § 7 hereof or in the payment of any other monies hereunder, and such default shall continue for five days;

B. the Lessee shall make or permit any unauthorized assignment or transfer of this Lease or of possession of the Units, or any thereof;

C. the insurance to be maintained by the Lessee under § 20 hereof shall for any reason not remain in full force and effect as therein provided unless comparable substitute insurance satisfactory to the Lessor and the Agent shall be in force;

D. default shall be made in observance or performance of any other of the covenants, conditions and agreements on the part of the Lessee contained herein and such default shall continue for 25 days after written notice from the Lessor to the Lessee specifying the default and demanding that the same be remedied;

E. 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 this Lease 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 a trustee or trustees, within 30 days after such appointment (whether or not such appointment is sub-

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ject to confirmation or ratification), if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

F. any proceedings shall be commenced by or against the Lessee for any relief which includes, or might result in, modification of the obligations of the Lessee under this Lease 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 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 Lessee under this Lease 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 Lessee or for the property of the Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment (whether or not such appointment is subject to confirmation or ratification), if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

G. default shall be made in the payment of any premium payment under Section 3 of the Guaranty Agreement, and such default shall continue for five days (provided that such a payment default shall not constitute an Event of Default without the prior consent of the Builder);

then, in any such case, the Lessor at its option, may:

(a) proceed, by appropriate court action or actions either at law or in equity, to enforce performance by the Lessee of the applicable covenants of this Lease or to recover damages for the breach thereof, or

(b) by notice in writing to the Lessee (i) terminate this Lease, or (ii) terminate the Lessee's interest in the Lease, and then terminate the Lessee's interest in the Equipment through the exercise of its rights under § 11 hereof to obtain possession of the Equipment from the Lessee and await the election of the Builder on or before the Election Date as that term is defined in the Guaranty Agreement with respect to the Lessor's assignment and the Builder's assumption, effective as of the occurrence of the Event of Default, of all of the Lessee's obligations and interests under the Lease with the exception of any obligations which arise solely by reason of events which have occurred prior to the effective date of such assignment to the Builder; whereupon all rights of the Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but the Lessee shall remain liable as herein provided; and thereupon the Lessor may by its agents enter upon the premises of the Lessee or other premises where any of the Units may be and take possession of all or any such Units and thenceforth hold, possess, and enjoy the same free from any right of the Lessee, or its successors, or assigns, to use the Units for any purpose whatever. The Lessor shall, nonetheless, have a right to recover from the Lessee any and all

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amounts which under the terms of this Lease may be then due or which may have accrued to the date of such termination (computing the rental for any number of days less than a full rental period by multiplying the rental for such full rental period by a fraction of which the numerator is such number of days and the denominator is 90) and also to recover from the Lessee as liquidated damages and not as a penalty (1) that percentage of the Purchase Price of the Equipment (as defined in the Conditional Sale Agreement) as is set forth on Schedule I hereto opposite the last quarterly period with respect to which the lease rental was paid by the Lessee under this Lease, plus interest at the rate of 13% per annum from the date of the Event of Default to the date of payment thereof less (2) the total net proceeds, if any, paid to Vendor and Vendee as defined in the Conditional Sale Agreement following any sale of the Equipment under the Conditional Sale Agreement or, if there has been no sale, the fair market value of the Equipment on the date of the Declaration of Default (as defined in the Conditional Sale Agreement) said fair market value to be determined by agreement of the parties, including any assignee of this Lease, or, in the event agreement cannot be reached, in the same manner as set forth in § 13 hereof plus (3) any expenses, including reasonable attorney's fees, in addition thereto which the Lessor shall have sustained by reason of the breach of any covenant or covenants of this Lease other than for the payment of rental; provided, however, that in the event that sale of the Equipment is prevented by the order of a court of competent jurisdiction or by any other governmental action, no reduction in the amount owing shall be made until such time as the Vendor as defined in the Conditional Sale Agreement receives any "income or proceeds of the Equipment" as that term is defined in the Conditional Sale Agreement. The amount payable under (1) less (2) shall be paid by the Lessee to the Lessor within 30 days after the date on which such amount is agreed upon or determined hereunder and the amounts payable under (3) shall be payable promptly by the Lessee to the Lessor upon receipt of invoice or invoices therefor.

The remedies in this Lease provided in favor of the Lessor shall not be deemed exclusive, but shall be cumulative, and shall be in addition to all other remedies in its favor existing at law or in equity. The Lessee hereby waives any mandatory requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided, to the extent that such waiver is permitted by law. The Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make rental payments regardless of any offset or claim which may be asserted by the Lessee or on its behalf.

The failure of the Lessor to exercise the rights granted it hereunder upon the occurrence of any of the contingencies set forth herein shall not constitute a waiver of any such right upon the continuation or recurrence of any such contingencies or similar contingencies.

Any termination of this Lease or of Lessee's interest in the Equipment and the Lease shall be subject to any rights of the Vendor (as defined in the Conditional Sale Agreement) to affect such termination and the status of the parties hereto.

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§ 11. *Return of Units Upon Default.* If this Lease or the Lessee's interest therein shall terminate pursuant to § 10 hereof, the Lessor may take, or cause to be taken or demand from the Lessee, immediate possession of Equipment, or one or more of the Units thereof, and may remove the same from possession and use of the Lessee. For such purpose, the Lessor may enter upon the premises of 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, including but not limited to diesel fuel or other necessary petroleum products, and any available trackage and other facilities or means of the Lessee, with or without process of law.

In case the Vendor (as defined in the Conditional Sale Agreement) shall demand possession of the Equipment pursuant to the Conditional Sale Agreement and shall designate a reasonable point or points on the lines or premises of the Lessee for the delivery of the Equipment to said Vendor, the Lessee shall at its own cost, expense and risk, forthwith and in the usual manner, cause the Equipment to be moved to such point or points on lines of the Lessee and shall there deliver the Equipment or cause it to be delivered to said Vendor. At the option of said Vendor, said Vendor may keep the Equipment on any of the lines or premises of the Lessee for a period of two years or until said Vendor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose, the Lessee agrees to furnish, without charge for rent, insurance or storage, the necessary facilities at any point or points selected by said Vendor reasonably convenient to the Lessee.

Subject to the rights of the Vendor in the preceding paragraph, in case the Lessor shall demand possession of the Equipment pursuant to this paragraph and shall designate a reasonable point or points on the lines or premises of the Lessee (or on those of its affiliates or to those of any connecting carriers for shipment) for the delivery of Equipment to the Lessor, the Lessee shall at its own cost, expense and risk, forthwith and in usual manner, cause the Equipment to be moved to such point or points on its lines (or on those of its affiliates or to those of any connecting carriers for shipment) and shall there deliver the Equipment or cause it to be delivered to the Lessor. At the option of the Lessor, the Lessor may keep the Equipment on any of the lines or premises of the Lessee for a period of two years or until the Lessor shall have leased, sold or otherwise disposed of the same, whichever first occurs, and for such purpose, the Lessee agrees to furnish, without charge for rent, storage, insurance or the necessary facilities at any point or points selected by the Lessor reasonably convenient to the Lessee. The assembling, delivery, storage and transportation of the Equipment as herein provided shall be at the cost, expense and risk of the Lessee. During any storage period, the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser, including the Vendor or an authorized representative thereof, or lessee of any such Unit, to inspect the same; *provided, however*, that the Lessee shall not be liable, except in the case of the negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising the rights of inspection granted under this Section. Without in any way limiting the obligation of the Lessee under the foregoing provisions of this § 11, the

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Lessee hereby irrevocably appoints the Lessor as agent and attorney of the Lessee with full power and authority, at any time while the Lessee is obligated to deliver possession of any Unit to the Lessor, to demand and take possession of such Unit in the name and on behalf of the Lessee from whomsoever shall be in possession of such Unit at the time. This agreement to deliver the Equipment, furnish facilities, and pay costs 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 Lessor shall be entitled to a decree against the Lessee requiring specific performance hereof.

The Lessee hereby expressly waives any and all claims against the Lessor and its assigns or agents and any and all claims against the Vendor (as defined in the Conditional Sale Agreement) and its assigns or agents for damages of whatever nature in connection with the retaking of any Unit of the Equipment in any reasonable manner.

§ 12. *Assignment; Prohibition Against Liens; Possession and Use.* This Lease shall be assignable in whole or in part by the Lessor without the consent of the Lessee, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor. All the rights of the Lessor hereunder shall inure to the benefit of the Lessor's assigns. Whenever the term Lessor is used in this Lease it shall include the assignees of the Lessor.

So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Units in accordance with the terms of this Lease but, without the prior written consent of the Lessor, the Lessee shall not assign or transfer its leasehold interest under this Lease in the Units or any of them except as hereinafter provided in this § 12. The Lessee, at its own expense, will promptly pay or discharge any and all sums claimed by any party which, if unpaid, might become a lien, charge, security interest or other encumbrance (other than an encumbrance resulting from claims against the Lessor or the Agent not related to the ownership of the Units) upon or with respect to any Unit, including any accession thereto, or any part thereof or the interest of the Lessor, the Agent or the Lessee therein, and will promptly discharge any such lien, claim, security interest or other encumbrance which arises; *provided, however*, that the Lessee shall be under no obligation to pay or discharge such claim so long as it is contesting the validity thereof in good faith in a reasonable manner and by appropriate legal proceedings and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property or rights of the Lessor hereunder or under the Conditional Sale Agreement or the title, property or rights of the Agent in or to the Units under the Conditional Sale Agreement. If any such claim shall have been charged or levied by anyone and in any manner against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor, provided that the Lessor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Lessor) or the Lessee shall have approved the payment thereof. The Lessee shall not, without the prior written consent of the Lessor, part with the possession or control of or suffer or allow to pass out of its possession or control, any of the Units, except to the extent permitted by this Section 12.

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So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession of the Units and to the use of the Units by it, or any affiliate upon lines of railroad owned or operated by it or any such affiliate or upon lines of railroad over which the Lessee or any such affiliate has trackage or other operating rights or over which railroad equipment of the Lessee or any such affiliate is regularly operated pursuant to contract, and also to permit the use of the Units by connecting and other carriers in the usual interchange of traffic or in the transportation thereof from the place of delivery to the Lessee but only upon and subject to all the terms and conditions of this Lease and the Conditional Sale Agreement; *provided, however*, that the Lessee shall not use or permit the use of any Unit in service involving the regular operation and maintenance thereof outside the United States of America. The Lessee may receive and retain compensation for such use from other railroads so using any of the Units.

The rights of Lessee under this Lease may not be assigned by the Lessee, except that, with the prior written consent of the Lessor and the Agent, the Lessee may assign all of its rights under this Lease to a third party of reliable standing with the financial community which shall have duly assumed Lessee's obligations hereunder. The obligations of the Lessee hereunder shall terminate upon the assignment of the Lessee's rights and obligations pursuant to this paragraph except as to obligations and claims arising prior to such assignments; provided that nothing contained herein shall prohibit or restrict the right of the Lessee to assign or transfer all of its rights hereunder to any corporation, which shall have duly assumed all of such obligations, into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety, but in any event only if such corporation will not, upon the effectiveness of such assumption, merger, consolidation or acquisition be in default under any provisions of this Lease.

§ 13. *Renewal Options.* Provided that this Lease has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the term of this Lease, elect to extend the term of the Lease on the same terms and conditions contained herein except as otherwise provided in this Section in respect to all, but no fewer than all, the Units covered by this Lease for a five-year period commencing on the scheduled expiration of the original term, at a rental payable in advance in 20 quarterly payments, each in an amount equal to the Fair Market Rental as hereinafter defined, such quarterly payments to be made January 1, April 1, July 1 and October 1 in each year of the extended term and with a Casualty Value payment schedule to be negotiated by the Lessee and the Lessor.

In the event that the Lessee exercises its option to extend the initial term of the Lease for a five year period, and provided that this Lease, as extended, has not been earlier terminated and the Lessee is not in default hereunder, the Lessee may, by written notice delivered to the Lessor not less than six months prior to the end of the initial extended term of this Lease, elect to extend the term of the Lease for an additional five year

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period subject to all the terms and conditions applicable to the exercise of the Lessee's option to extend the initial term of the Lease at a then Fair Market Rental as hereinafter defined and a Casualty Value payment schedule to be negotiated by the parties.

Fair Market Rental shall be determined on the basis of, and shall be equal to, the rental which would obtain in an arm's-length transaction between an informed and willing lessee (other than (i) a lessee currently in possession and (ii) a used equipment dealer), and an informed and willing lessor under no compulsion to lease and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental. If on or before four months prior to the expiration of the term of this Lease or renewal term, as the case may be, the Lessor and the Lessee are unable to agree upon a determination of the Fair Market Rental of the Units, such rental shall be determined in accordance with the foregoing definition by three qualified independent appraisers, one of whom shall be appointed by Lessor and the other by the Lessee and the two appraisers so chosen shall select a third appraiser and they shall render their appraisal within 30 days of the appointment of the third appraiser and such appraisal shall be final and conclusive between the parties. In case either of the parties shall fail or refuse to appoint an appraiser for a period of ten days after written notice is given by the other party to make such appointment, the appraiser appointed by the party having given notice to make such an appointment shall appoint a like qualified and disinterested appraiser for the defaulting party and the said two appraisers, so appointed, shall select a third appraiser and they shall render their appraisal within 30 days and such appraisal shall be final and conclusive upon the parties. In any case where two appraisers are to appoint a third and cannot agree within thirty days after the appointment of the second appraiser, the third appraiser shall be appointed, upon the application of either party, by the American Arbitration Association. If any appraiser shall decline or fail to act, the party originally having chosen such appraiser or the American Arbitration Association, as the case may be, shall appoint another to act in his place. The expenses and fees of all appraisers hereunder shall be borne and paid for by the Lessee.

§ 14. *Return of Units upon Expiration of Term.* As soon as practicable on or after the expiration of the term of this Lease with respect to any Unit, the Lessee will (unless the Unit is re-leased to the Lessee), at its own cost and expense, at the request of the Lessor, deliver possession of such Unit to the Lessor upon such storage tracks of the Lessee or as the Lessor may reasonably designate, or, in the absence of such designation, as the Lessee may select, and permit the Lessor to store such Unit on such tracks for a period not exceeding three months and transport the same, at any time within such three-month period, to any reasonable place on the lines of railroad operated by the Lessee, or to any connecting carrier for shipment, all as directed by the Lessor; the movement and storage of such Unit to be at the expense and risk of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of such Unit, to inspect the

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same; *provided, however*, that the Lessee shall not be liable, except in the case of negligence of the Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of the Lessor or any prospective purchaser, the rights of inspection granted under this sentence. The movement, delivery, storage and transporting of the Units as hereinbefore provided are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee so to move, deliver, store and transport the Units.

The Lessee shall return the Equipment upon the termination of the initial term or any extended term of this Lease in the same operating order, repair and condition as when originally delivered hereunder, ordinary wear and tear excepted.

§ 15. *Lessee's Warranties and Representations.* The Lessee warrants and represents as follows:

A. The Lessee is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin and has the full corporate power and legal right and power to enter into this Lease, the Purchase Agreement Assignment and the acknowledgement to the Lease Assignment and to perform its duties and obligations hereunder and thereunder and is duly qualified and authorized to do business in each jurisdiction in which its failure to so qualify would have a material adverse impact upon its financial condition or its ability to perform and discharge its obligation under this Lease, the Purchase Agreement Assignment and the acknowledgement to the Lease Assignment; and this Lease, the Purchase Agreement Assignment and the acknowledgement to the Lease Assignment have been duly authorized, executed and delivered by the Lessee and constitute valid, legal and binding agreements of the Lessee, enforceable in accordance with their respective terms except as the same may be limited by laws relating to bankruptcy, insolvency or other similar laws affecting generally the rights of creditors, assuming due authorization, execution and delivery by the other parties thereto.

B. Neither the execution and delivery of this Lease, the Purchase Agreement Assignment or the acknowledgement to the Lease Assignment nor the consummation of the transaction herein and therein contemplated or the fulfillment of, or compliance with, the terms and provisions hereof and thereof by the Lessee will conflict with, or result in a breach of, any of the terms, conditions or provisions of the Articles of Incorporation or By-laws of the Lessee or of any bond, debenture, note, mortgage, indenture, contract or other agreement or instrument to which the Lessee is a party or by which it or its property is bound or will constitute, with the giving of notice or the passage of time or both, a default hereunder or thereunder or will conflict with, or result in a breach of any of the terms, conditions or provisions of any law, regulation, order, judgment or decree of any court or governmental instrumentality.

C. Insofar as the Lessee knows, no approval, order or license of the Interstate Commerce Commission or any other governmental authority, federal, state or local, is necessary in order for the Lessor to enter into

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the Conditional Sale Agreement, this Lease or the Lease Assignment or to perform its duties or obligations hereunder or thereunder, and the execution and delivery by the Lessor of such agreements and the performance by it of its obligations thereunder and its ownership of the Units do not subject the Lessor to the jurisdiction of, or regulation by, the Interstate Commerce Commission or any other regulatory authority, federal, state or local and in the event that the Lessor shall be advised by the Lessor's counsel that any such approval, order or license is so necessary or that such execution and delivery or performance does so subject the Lessor to any such jurisdiction or regulation solely as a result of the Lessor's ownership of the Units, the Lessee shall not operate or otherwise utilize the Equipment in any and all jurisdictions for which any such approval, order or license is necessary or in which the Lessor shall become subject to such jurisdiction or regulation, until the Lessee shall have either (i) obtained such approvals, orders or licenses or waivers thereof or waivers of all such jurisdiction or regulation from the applicable federal, state and local regulatory authority, as the case may be, or (ii) in form and substance satisfactory to the Lessor, indemnified the Lessor from and against any and all claims, liabilities, penalties or damages of any nature which might arise and/or result from the continued operations of the Equipment in any and all such jurisdictions, except for claims, liabilities penalties or damages arising from acts or omissions of the Lessor.

D. The Lessee has the full corporate power and authority and legal right and possesses all licenses and permits necessary to carry on its principal business as now conducted.

E. There are no actions, suits or proceedings pending or threatened which, if adversely determined against the Lessee, will materially prevent or interfere with its ability or right to perform its duties and obligations under this Lease, the Purchase Agreement Assignment and the acknowledgement to the Lease Assignment.

F. The Lessee has not directly or indirectly taken any action and will not take any action the effect of which will bring the sale of the Conditional Sale Indebtedness under the Conditional Sale Agreement or the investment by the Vendee in the Units within the provisions of Section 5 of the Securities Act of 1933, as amended. The Lessee has not offered any rights, claims or indebtedness under the Conditional Sale Agreement or ownership interests in the Units (or any securities similar to any of the foregoing) to, or has solicited any offer to buy any thereof from, any person other than the Vendee and the Investors. The Lessee makes no representations as to activities by Radnor Associates, Ltd. or Monterey Capital, Inc.

G. The Lessee has furnished to the Investors and the Lessor a consolidated balance sheet, prepared utilizing generally accepted accounting principles, of the Lessee as of December 31, 1974, a related consolidated income statement (income and retained earnings), and an ICC CBS statement (condensed balance sheet) as of December 31, 1975, together with an income statement for the 12 months then ended, both prepared in accordance with the rules of the Interstate Commerce Commission. Such financial statements are in accordance with the books and records of the

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Lessee and have been prepared in accordance with the respectively applicable accounting principles on a consistent basis throughout the periods covered thereby, and such financial statements fairly present the financial condition of the Lessee at such dates and the results of its operations for such periods. Since December 31, 1975, there have been no changes which, individually or in the aggregate, have been materially adverse to the condition, financial or otherwise, of the Lessee as shown on the balance sheet as of such date, except changes in the ordinary course of business.

H. Each of the Units, as of the Closing Date, with respect thereto as defined in the Conditional Sale Agreement, will have an estimated useful life of at least 18 years and an estimated fair market value at the end of the initial term of this Lease of at least 20% of the Purchase Price of such Unit, without including in such value any increase or decrease for inflation or deflation during such term.

I. As of the Closing Date, with respect thereto as defined in the Conditional Sale Agreement, the Lessee has not directly or indirectly taken any action which would adversely affect the good and marketable title of the Lessor to each of the Units including, without limitation, any action which would create or result in the creation of any liens, encumbrances and claims of any nature whatsoever against the Equipment, except only for the rights of the Lessee under this Lease.

On the Closing Date, under and as defined in the Conditional Sale Agreement, the Lessee will deliver to the Lessor the written opinion of counsel for the Lessee in scope and substance satisfactory to the Lessor and its counsel as to Section 15A herein and as required under Article 4 of the Conditional Sale Agreement.

§ 16. *Recording; Expenses.* The Lessee will cause this Lease, the Conditional Sale Agreement and any assignment hereof or thereof to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act. The Lessee will undertake the filing, registering, depositing, and recording required of the Lessor under the Conditional Sale Agreement and will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, record (and will refile, reregister, deposit and redeposit or re-record whenever required) any and all further instruments required by law or reasonably requested by the Lessor or the Agent for the purpose of proper protection, to their satisfaction, of the Agent's and the Lessor's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the Conditional Sale Agreement or the assignment thereof to the Agent; and the Lessee will promptly furnish to the Agent and the Lessor evidences of all such filing, registering, depositing or recording, and an opinion or opinions of counsel for the Lessee with respect thereto satisfactory to the Agent and the Lessor. This Lease and the Conditional Sale Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance hereunder of any Unit.

The Lessee will pay all reasonable costs and expenses (other than fees and expenses of counsel for the Builder) incident to this Lease and the Conditional Sale Agreement, the first assignments of the Lease and the

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Conditional Sale Agreement (including the fees and expenses of an agent, if the first assignee is an agent), the Trust Agreement, referred to in the first paragraph hereof, any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of the Lease and the Conditional Sale Agreement and all printing costs.

§17. *Interest on Overdue Rentals.* Anything to the contrary herein contained notwithstanding, any nonpayment of rentals and other obligations due hereunder shall result in the obligation on the part of the Lessee promptly to pay as additional rental, to the extent legally enforceable, an amount equal to 13% per annum of the overdue rentals and other obligations for the period of time during which they are overdue or such lesser amount as may be legally enforceable.

§ 18. *Notices.* Any notice required or permitted to be given herein shall be deemed to have been given when deposited in the United States certified mails, first-class postage prepaid, addressed as follows:

- (a) if to the Lessor, at 4000 West North Ave., Chicago, Ill. 60639 Attn: Corporate Trust Dept.;
- (b) if to the Lessee, Room 746, Union Station Building, 516 W. Jackson Blvd., Chicago, Ill., 60606 Attn: Vice President, Finance and Accounting; and
- (c) if to the Agent, at Broad and Chestnut Sts., Philadelphia, PA 19101,

or addressed to such other address as the Lessor, the Lessee or the Agent shall hereafter furnish to the others in writing.

§ 19. *Severability; Effect and Modification of Lease.* Any provision of this Lease which is prohibited or unenforceable in any jurisdiction, shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease, together with other related documents dated as of the date hereof, exclusively and completely states the rights of the Lessor and the Lessee with respect to the Units and supersedes all other agreements, oral or written, with respect to the Units. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and of the Lessee or its duly authorized representative and consented to in writing by the Agent.

§ 20. *Insurance.* The Lessee will maintain, at its sole cost and expense, at all times during the term of this Lease and any renewals thereof (and thereafter during the first three (3) month period in which the Units are being assembled and delivered to the locations specified in § 14 hereof), with reputable insurers acceptable to the Lessor and, so long as any portion of the Conditional Sale Indebtedness under the Conditional Sale Agreement shall remain outstanding, acceptable to the Agent, insurance in an amount not less than the Casualty Value of each Unit leased hereunder, insuring against loss and destruction of, and damage to, such

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Unit arising out of fire, windstorm, explosion, and all other hazards and risks ordinarily subject to extended coverage insurance, and against such other hazards and risks as are customarily insured against by companies owning or leasing property of a similar character and engaged in a business similar to that engaged in by Lessee with a deductible amount not in excess of \$50,000 per Unit. All such insurance policies shall (i) name the Lessor and Agent as additional insureds, with losses to be payable to the Lessor, the Agent and the Lessee as their respective interests may appear, (ii) provide that the policies will not be invalidated as against the Lessor or the Agent because of any violation of a condition or warranty of the policy or application therefor by Lessee, (iii) provide that the policies may be materially altered or cancelled by the insurer only after thirty (30) days prior written notice to the Lessor and the Agent and (iv) provide that the policies shall be prepaid a minimum of ninety (90) days. The Lessee shall deliver to the Lessor and the Agent, prior to the commencement of the lease term for any Unit (or at such other time or times as the Lessor may request) a certificate or other evidence of the maintenance of all such insurance satisfactory to the Lessor and the Agent; provided, however, that the Lessor and the Agent shall be under no duty to examine such certificate or other evidence of insurance, or to advise the Lessee in the event that its insurance is not in compliance with this Lease. In the event of failure on the part of the Lessee to provide and furnish any of the aforesaid insurance, the Lessor or the Agent, upon notice to Lessee, may procure such insurance and the Lessee shall, upon demand, reimburse the Lessor and the Agent for all expenditures made by the Lessor or Agent for such insurance, together with interest thereon computed at the maximum rate of interest permitted by law, but not more than 13% per annum, from the date of the Lessor's or the Agent's payment until reimbursed by the Lessee. The insurance policies shall also provide that upon receipt by the insurer from the Lessor or the Agent of any written notice of the occurrence of an Event of Default hereunder, any proceeds payable by said insurer with respect to any loss or destruction of, or damage to, any Unit, shall be payable solely to the Agent (or the Lessor after payment of all outstanding Conditional Sale Indebtedness) from the date of said insurer's receipt of such written notice, up to the date said insurer receives written notice from the Agent or the Lessor that said Event of Default is no longer continuing hereunder.

The Lessee will procure and maintain at its expense during the term of this Lease (and any renewals thereof) with insurers satisfactory to the Lessor and the Agent bodily injury and third party property damage insurance for each Unit with liability limits not less than \$20 million per occurrence and with a deductible amount not in excess of \$2,000,000. The policies for such insurance shall (i) name the Lessor and the Agent as additional insureds, as their respective interests may appear, (ii) provide that if the insurers cancel such insurance for any reason whatsoever, or the same is allowed to lapse for non-payment of premium, such cancellation or lapse shall not be effective as to the Lessor or the Agent for thirty (30) days after receipt by the Lessor and the Agent of written notice by the insurers of such cancellation or lapse, (iii) provide for at least thirty (30) days prior written notice to the Lessor and the Agent of any alteration in the terms of such policy adverse to the respective interests

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of the Lessor or the Agent and (iv) provide that in respect of the interests of the Lessor or the Agent in such policies, the insurance shall not be invalidated by any action or inaction of the Lessee or any other person (other than of the Lessor or the Agent), and shall insure the Lessor's and the Agent's interests as they appear regardless of any breach or violation by the Lessee of any warranties, declarations or conditions contained in such policies.

From time to time upon the expiration date of each policy of such insurance, the Lessee shall furnish to the Lessor and the Agent a certificate signed by a firm of independent insurance brokers, appointed by the Lessee and not objected to by the Lessor or the Agent, showing the insurance then maintained by the Lessee pursuant to this § 20 with respect to the Units (and the expiration date of each policy of such insurance) and stating the opinion of said firm that the insurance then carried and maintained on or with respect to the Units complies with the terms hereof. In the event that the Lessee shall fail to maintain insurance as herein provided, the Lessor, upon notice to the Lessee, may at its option provide such insurance and, in such event, the Lessee shall, upon demand, reimburse the Lessor for the cost thereof, together with interest thereon at the rate of 13% per annum.

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

§ 22. *Law Governing.* The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania, *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

§ 23. *Lessor's Trust Capacity.* 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 Lessor are each and every one of them made and intended not as personal representations, undertakings and agreements by the Lessor, or for the purpose or with the intention of binding the Lessor personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement referred to in the first paragraph hereof, and this Agreement is executed and delivered by the Lessor solely in the exercise of the powers expressly conferred upon the Lessor as trustee under said Trust Agreement; and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Lessor, or any Trustor or on account of any representation, undertaking or agreement of the Lessor or the Trustors, either expressed or implied, all such personal liability, if any, being expressly waived and released by the Lessee and by all persons claiming by, through or under the Lessee; provided, however, that the Lessee or any person claiming by, through or under the Lessee,

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making claim hereunder, may look to said Trust Estate for satisfaction of the same.

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

**PIONEER BANK & TRUST COMPANY,
as Trustee as aforesaid**

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

**CHICAGO, MILWAUKEE, ST. PAUL &
PACIFIC RAILROAD COMPANY,
Lessee**

by _____
Vice President

[CORPORATE SEAL]

Attest:

Assistant Secretary

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SCHEDULE A

Type	Builder's Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Average Unit Base Price	Total Base Price	Delivery
MP15AC	8103	10	434-443	\$339,518.50	\$3,395,185.00	F.O.B. Bensenville, Illinois
		22	444-465	339,476.00	7,468,472.00	
Total						<u>\$10,863,657.00</u>

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SCHEDULE I

Last Lease Payment Due Date Month/Year	% of Purchase Price	Last Lease Payment Due Date Month/Year	% of Purchase Price
04/76	104.921	10/83	70.165
07/76	106.040	01/84	68.789
10/76	107.137	04/84	67.373
01/77	108.058	07/84	65.914
04/77	108.682	10/84	64.411
07/77	109.031	01/85	62.863
10/77	109.274	04/85	61.269
01/78	109.407	07/85	59.626
04/78	109.424	10/85	57.935
07/78	109.340	01/86	56.193
10/78	109.149	04/86	54.398
01/79	108.848	07/86	52.550
04/79	101.764	10/86	50.646
07/79	101.245	01/87	48.686
10/79	100.620	04/87	46.742
01/80	99.884	07/87	44.834
04/80	99.033	10/87	42.965
07/80	98.124	01/88	41.138
10/80	97.187	04/88	39.354
01/81	96.223	07/88	37.631
04/81	88.563	10/88	35.970
07/81	87.539	01/89	34.315
10/81	86.485	04/89	32.655
01/82	85.400	07/89	30.998
04/82	84.281	10/89	29.342
07/82	83.130	01/90	27.688
10/82	81.943	04/90	26.034
01/83	80.721	07/90	24.388
04/83	72.796	10/90	22.749
07/83	71.500	01/91	21.117
		Thereafter	20.000