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9-324A155

Date NOV 20 1979
Fee $ 100.00
ICC Washington, D. C.

November 20, 1979

Chicago and North Western Transportation Company
Lease Financing Dated as of October 15, 1979
11-3/8% Conditional Sale Indebtedness Due January 15, 1994
(Mercantile Trust Company, N.A.--Blue Covers)

Dear Madam:

Pursuant to 49 U.S.C. § 11303(a) and the Commission's rules and regulations thereunder, I enclose herewith on behalf of Chicago and North Western Transportation Company, for filing and recordation, counterparts of the following documents:

New Number →

1 (a) Conditional Sale Agreement (B) dated as of October 15, 1979, between First Security State Bank, as Trustee, and General Motors Corporation (Electro-Motive Division);

(b) Agreement and Assignment dated as of October 15, 1979, between General Motors Corporation (Electro-Motive Division) and First Security Bank of Utah, National Association, as Agent; and

2 (a) Lease of Railroad Equipment (B) dated as of October 15, 1979, between Chicago and North Western Transportation Company and First Security State Bank, as Trustee;

Counterpart

11072-A
11072-B

(b) Assignment of Lease and Agreement dated as of October 15, 1979, between First Security State Bank, as Trustee, and First Security Bank of Utah, National Association, as Agent.

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

(1) Agent-Vendor:

First Security Bank of Utah,
National Association
79 South Main Street (Suite 310)
Salt Lake City, Utah 84111

(2) Trustee:

First Security State Bank
79 South Main Street (Suite 310)
Salt Lake City, Utah 84111

(3) Builder-Vendor:

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

(4) Lessee:

Chicago and North Western
Transportation Company
400 West Madison Street
Chicago, Illinois 60606

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

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

12 GP-38-2 locomotives, bearing identifying numbers of the Lessee CNW 4600-CNW 4611, both inclusive.

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

of Lease and Agreement (together constituting one document).

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

Very truly yours,

Edward F. Cox

Edward F. Cox,
As Agent for Chicago and North Western
Transportation Company

Agatha L. Mergenovich, Secretary,
Interstate Commerce Commission,
Washington, D. C. 20423

Encls.

4

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF THE SECRETARY

Edward F. Cox
Chicago & Northwestern Transportation Co.
One Chase Manhattan Plaza
New York, New York 10005

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/20/79 at 4:30PM, and assigned recordation number(s). 11072, 11072A, 11072B, & 11072C.

Sincerely yours,

H. G. Homme, Jr.
Secretary

Enclosure(s)

SE-30
(3/79)

RECORDATION NO. 11072 Filed 1425
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INTERSTATE COMMERCE COMMISSION

[CS&M Ref. 5237-010]

CONDITIONAL SALE AGREEMENT

(B)

Dated as of October 15, 1979

between

FIRST SECURITY STATE BANK,

Trustee,

and

GENERAL MOTORS CORPORATION,
(Electro-Motive Division),

Builder.

11-3/8% Conditional Sale Indebtedness Due January 15, 1994

[Covering 12 GM Locomotives]

CONDITIONAL SALE AGREEEMENT

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CONDITIONAL SALE AGREEMENT dated as of October 15, 1979, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation ("Builder", or "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and FIRST SECURITY STATE BANK, a Utah banking corporation ("Trustee"), acting not in its individual capacity but solely as trustee under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with the corporation named in Item 6 of Annex A hereto ("Owner").

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

WHEREAS Trustee is entering into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") with CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY ("Lessee"), substantially in the form attached hereto as Annex C;

WHEREAS Trustee, acting for two other Owners, and Builder are entering into two other conditional sale agreements ("Other CSAs") dated as of the date hereof involving railroad equipment similar to the Equipment; and

WHEREAS FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION ("Agent", or "Vendor" as the context may require), is acting as agent for certain investors (individually "Investor" and, together with any assignees, collectively "Investors") pursuant to the Participation Agreement dated as of the date hereof (the "Participation Agreement") among Agent, Lessee, Owner, Trustee and Investor;

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

ARTICLE I

ASSIGNMENT; DEFINITIONS

1.1. Contemplated Sources of Purchase Price; Assignment. The parties hereto contemplate that Trustee will furnish that portion of the Purchase Price (as hereinafter

defined) for the Equipment as is required under subparagraph (a) of Paragraph 4.3 hereof and that an amount equal to the balance of such Purchase Price shall be paid to Builder by Agent pursuant to an Agreement and Assignment dated as of the date hereof (the "CSA Assignment") between Builder and Agent.

1.2. Meaning of "Builder" and "Vendor". The term "Builder", whenever used in this Agreement, means, both before and after any assignment of its rights hereunder, the party hereto which has manufactured the units of Equipment to be constructed and sold hereunder and any successor or successors for the time being to its manufacturing properties and business. The term "Vendor", whenever used in this Agreement, means, before any such assignment, Builder, 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.

1.3. Lease Assignment. In case of such assignment, Trustee will assign to Vendor, as security for the payment and performance of all Trustee's obligations hereunder, all right, title, and interest of Trustee with certain exceptions in and to the Lease, pursuant to an Assignment of Lease and Agreement in substantially the form attached hereto as Annex D (the "Lease Assignment"), and Lessee shall consent thereto pursuant to a Consent and Agreement in the form attached to the Lease Assignment (the "Consent").

ARTICLE 2

CONSTRUCTION AND SALE

Pursuant to this Agreement, Builder shall construct the Equipment at its plant set forth in Annex B hereto, and will sell and deliver to Trustee, and Trustee will purchase from Builder and accept delivery of and pay for (as hereinafter provided), the Equipment, each unit of which shall be constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may be agreed upon in writing among Builder, Trustee and Lessee (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture thereof, to all Department of Transportation and

Interstate Commerce Commission requirements and specifications and to all standards, if any, recommended by the Association of American Railroads reasonably interpreted as being applicable to railroad equipment of the character of such unit, and each such unit will be "new section 38 property" within the meaning of Section 48(b) of the Internal Revenue Code of 1954, as amended, and will not have been used or placed in service prior to delivery.

ARTICLE 3

INSPECTION AND DELIVERY

3.1. Place of Delivery. Builder will deliver the units of Equipment to Trustee at the place specified in Annex B hereto (or if Annex B does not specify a place or places, at the place or places designated by Trustee), freight charges and storage charges, if any, prepaid, in accordance with the delivery schedule set forth in Annex B hereto; provided, however, that delivery of the Equipment shall not be made until this Agreement, the CSA Assignment, the Lease and the Lease Assignment have been filed pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and provision shall have been made for publication of notice of such deposit in The Canada Gazette; and provided, further, that Builder shall not have any obligation to deliver any unit of Equipment hereunder subsequent to the commencement of any proceedings specified in clauses (c) or (d) of Paragraph 15.1 hereof or the occurrence of any event of default (as described in Article 15 hereof), or event which, with the lapse of time and/or demand, could constitute such an event of default. Builder agrees not to deliver any unit of the Equipment hereunder (a) following receipt of written notice from Trustee or Agent of the commencement of any such proceedings or the occurrence of any such event, as aforesaid, or (b) until it receives notice from Agent that the conditions contained in Paragraph 7 of the Participation Agreement have been met and from Trustee that the conditions contained in Paragraph 8 of the Participation Agreement have been met.

3.2. Exclusion of Equipment. Any unit of Equipment not delivered pursuant to Paragraph 3.1 hereof, and any unit of Equipment not delivered and accepted hereunder on or before March 30, 1980, shall be excluded from this Agreement and Trustee shall be relieved of its obligation hereunder to purchase and pay for such unit of Equipment. If any unit

of Equipment shall be excluded herefrom pursuant to the preceding sentence, the parties hereto shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. Pursuant to the Participation Agreement Lessee has agreed to purchase such excluded Equipment and any Equipment excluded from this Agreement pursuant to Paragraph 4.1 hereof from Builder and to pay the full purchase price therefor, upon the satisfaction or waiver of any conditions of the Purchase Order relating thereto (as defined in the Participation Agreement) all as provided in Paragraph 1 of the Participation Agreement. Trustee agrees, upon any such exclusion, to take such steps, including the execution of instruments of transfer, as it may be reasonably requested by Lessee for the purpose of acknowledging and perfecting the interest of Lessee in any unit of Equipment so excluded from this Agreement, and Trustee shall have no further obligation or liability in respect of units so excluded.

3.3. Force Majeure. Builder's obligation as to the time of delivery set forth in Annex B is subject, however, to delays resulting from causes beyond 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.

3.4. Inspection. During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of Trustee (who may be employees of Lessee), and Builder shall grant to such authorized inspectors reasonable access to its plant. Builder agrees to inspect the materials used in the construction of the Equipment in accordance with the standard quality control practices of Builder. Prior to delivery each unit of the Equipment shall be presented to an inspector of Trustee for inspection at the place specified for delivery or at the plant of Builder of such units specified in Annex B hereto, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of Trustee (who may be an employee of Lessee) shall execute and deliver to Builder a certificate of acceptance (the "Certificate of Acceptance") stating that such unit or units have been inspected and accepted on behalf of Trustee and are marked in accordance with Article 9 hereof;

provided, however, that Builder shall not thereby be relieved of its warranty referred to in Paragraph 13.4 hereof. By § 2 of the Lease and by this Paragraph 3.4, Trustee is appointing Lessee its agent to inspect and accept delivery of the Equipment. Acceptance of any unit of Equipment by Lessee (or its employees or agents, as aforesaid) pursuant to § 2 of the Lease shall be deemed to be acceptance of such unit by Trustee.

3.5. Builder's Responsibilities After Delivery. On delivery by Builder hereunder of units of Equipment and acceptance of each such unit hereunder at the place specified for delivery, 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 Builder shall not thereby be relieved of its warranty referred to in Article 13 hereof.

Notwithstanding the foregoing or any other provision of this Agreement to the contrary, the delivery to and acceptance by or on behalf of Trustee of any unit of Equipment excluded from this Agreement pursuant to Paragraph 4.1 hereof shall be ineffective, ab initio, to create in or transfer to Trustee any legal or beneficial right or interest in such unit or (except as provided in Paragraph 4.1 hereof) to impose on Trustee any liability, obligation or responsibility with respect thereto; any right or interest in any such unit created in or transferred to or purported to be created in or transferred to Trustee shall be held by Trustee solely as trustee for the benefit of Builder.

ARTICLE 4

PURCHASE PRICE AND PAYMENT

4.1. Meaning of "Purchase Price"; Exclusion of Units. The base price or prices per unit of the Equipment to be paid by Trustee are set forth in Annex B hereto. Such base price or prices are subject to such increase or decrease as are provided for in the Purchase Order or as otherwise may be agreed to by Builder, Trustee and Lessee. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased as set forth in the invoice or invoices of Builder delivered to Trustee and, if the Purchase Price is other than the base price or prices set forth in Annex B, the invoice or invoices shall be

accompanied by, or have endorsed thereon, the agreement or approval of Lessee and Trustee (such invoice or invoices being hereinafter called the "Invoices"). If on any Closing Date (as defined in Paragraph 4.2 hereof) the aggregate Purchase Price of Equipment for which settlement has theretofore been and is then being made under this Agreement would, but for the provisions of this sentence, exceed the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as Trustee and Lessee may have agreed to prior to the delivery of any unit or units of Equipment that, but for such agreement, would be excluded from this Agreement), Builder (and any assignee of Builder) and Trustee will enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by Trustee and Lessee, which will, after giving effect to such exclusion, reduce such aggregate Purchase Price to not more than the Maximum Purchase Price specified in Item 5 of Annex A hereto (or such higher amount as aforesaid).

4.2. Settlement and Closing Dates. The Equipment shall be settled for in such number of groups of units of the Equipment delivered to and accepted by Trustee as is provided in Item 2 of Annex A hereto (each such group being hereinafter called a "Group"). The term "Closing Date" with respect to any Group shall mean such business day (not later than April 15, 1980, such date being herein called the "Cut-Off Date"), occurring not more than 10 business days following presentation by Builder of such Group to Trustee of the Invoices (with copies to Lessee) and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by Lessee by written notice delivered to Trustee and Agent at least six business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Salt Lake City, Utah, New York, New York, Chicago, Illinois, or the city in which Owner maintains its principal place of business are authorized or obligated to remain closed.

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

(a) on the Closing Date with respect to each Group

an amount equal to (i) 32.1% of the aggregate Purchase Price of such Group up to the Maximum Purchase Price, plus, (ii) to the extent Trustee shall have agreed, any amount by which the aggregate Purchase Price exceeds the Maximum Purchase Price; and

(b) in 28 consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of Equipment for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph (said portion of the Purchase Price payable in installments under this subparagraph (b) is hereinafter called the "CSA Indebtedness").

4.4. CSA Indebtedness; Payment Dates; Interest. The installments of CSA Indebtedness shall be payable semiannually on January 15 and July 15 in each year, commencing July 15, 1980, to and including January 15, 1994, each such date being hereinafter called a "Payment Date". The unpaid balance of the CSA Indebtedness shall bear interest from the Closing Date in respect of which such Indebtedness was incurred at the rate of 11-3/8% per annum, payable to the extent accrued (i) on January 15, 1980, and (ii) on each Payment Date thereafter. The installments of principal of CSA Indebtedness payable on each Payment Date shall be calculated so that the amount and allocation of principal and interest payable on each Payment Date shall be substantially in proportion to the amount and allocation of principal and interest on such Payment Date set forth in Schedule I hereto and the aggregate of such installments of principal and interest will completely amortize the CSA Indebtedness at maturity. Trustee will furnish to Vendor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

If any of the dates for payment of principal or interest is not a business day, such payment shall be payable on the succeeding business day.

4.5. Calculation of Interest. Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months except that interest payable on January 15, 1980, shall be calculated on an actual elapsed day, 365-day year, basis.

4.6. Penalty Interest. Trustee will pay, to the extent legally enforceable, interest upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof at the rate of 12-3/8% per annum (the "Penalty Rate") or such lesser amount as shall be legally enforceable, anything herein to the contrary notwithstanding.

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

4.8. Liability of Trustee Limited to "Income and Proceeds from Equipment"; Meaning Thereof; Limitation on Execution of Judgments. Notwithstanding any other provision of this Agreement (including, but not limited to, any provision of Articles 15 and 16 hereof), but not limiting the effect of Article 21 hereof, the liability of Trustee or any assignee of Trustee for all payments to be made by it under and pursuant to this Agreement, including any liability arising out of or in connection with the performance of its obligations hereunder (with the exception only of the obligations set forth in subparagraph (a) of Paragraph 4.3 hereof and the proviso in Paragraph 12.3 hereof), shall not exceed an amount equal to, and shall be payable only out of, the "income and proceeds from the Equipment", and such payments shall be made by Trustee only to the extent that Trustee or any assignee of Trustee shall have actually received sufficient "income and proceeds from the Equipment" to make such payments. Except as provided in the preceding sentence, Trustee shall have no personal liability to make any payments under this Agreement except from the "income and proceeds from the Equipment". In addition, Trustee (1) makes no representation or warranty, and is not responsible for, the execution, validity, sufficiency or enforceability of the Lease insofar as it relates to Lessee (or any document relative thereto) or of any of Lessee's obligations thereunder and (2) shall not be responsible for the performance or observance by Lessee of any of its agreements, representations, indemnities, obligations or other undertakings under the Lease or the Consent; it being understood that as to all such matters Vendor will look solely to Vendor's rights under this Agreement against the Equipment and to Vendor's rights under the Lease against

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 Trustee or any assignee of Trustee at any time after any such event and during the continuance thereof: (a) all amounts of rental and amounts in respect of Casualty Occurrences (as defined in Article 7 hereof) paid for or with respect to the Equipment pursuant to the Lease and any and all other payments received under § 10 or any other provision of the Lease; and (b) any and all payments or proceeds received for or with respect to the Equipment as the result of the sale, lease or other disposition thereof, after deducting all costs and expenses of such sale, lease or other disposition; and

(ii) at any other time only that portion of the amounts referred to in the foregoing clauses (a) and (b) as are indefeasibly received by Trustee or any assignee of Trustee and as shall equal the portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date such amounts were required to be paid pursuant to the Lease or as shall equal any other payments then due and payable under this Agreement;

it being understood that "income and proceeds from the Equipment" shall in no event include (A) amounts referred to in the foregoing clauses (a) and (b) which were received by Trustee or any assignee of Trustee prior to the existence of such an event of default which exceeded the amounts required to discharge that portion of the CSA Indebtedness (including prepayments thereof required in respect of Casualty Occurrences) and/or interest thereon due and payable on the date on which amounts with respect thereto received by Trustee or any assignee of Trustee were required to be paid to it pursuant to the Lease or which exceeded any other payments due and payable under this Agreement at the time such amounts were payable under the Lease or (B) amounts excluded from the Lease Assignment pursuant to Paragraph 1 thereof. Notwithstanding anything to the contrary contained in Article 15 or 16 hereof, Vendor agrees that in the event it shall obtain a judgment against Trustee for an amount in excess of the amounts payable by Trustee pursuant to the limitations set

forth in this paragraph, it will, accordingly, limit its execution of such judgment to amounts payable pursuant to the limitations set forth in this paragraph. Nothing contained herein limiting the liability of Trustee shall derogate from the right of Vendor to proceed against the Equipment or Trustee's interest in the Lease for the full unpaid Purchase Price of the Equipment and interest thereon and all other payments and obligations hereunder.

4.9. Obligation of Trustee Subject to Receipt of Certain Documents. The obligation of Trustee to make payments to Builder hereunder is subject to the furnishing by Builder to Trustee of the documents required to be furnished by Builder to Trustee pursuant to Section 4 of the CSA Assignment.

ARTICLE 5

SECURITY INTEREST IN THE EQUIPMENT

5.1. Vendor to Retain Security Interest; Accessions Are Part of Equipment. Vendor shall and hereby does retain a security interest in the Equipment until Trustee shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding any provision of this Agreement limiting the liability of Trustee and notwithstanding the delivery of the Equipment to and the possession and use thereof by Trustee and Lessee as provided in this Agreement and the Lease; it being understood that, subject thereto, ownership of the Equipment (upon delivery and acceptance thereof) shall pass to and remain in Trustee. Any and all parts installed on and additions and replacements made to any unit of the Equipment (i) which are not readily removable without causing material damage to such unit, (ii) the cost of which is included in the Purchase Price of such unit or (iii) which are required for the operation or use of such unit by the Association of American Railroads and/or the Interstate Commerce Commission, the United States Department of Transportation or other applicable regulatory body, shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

5.2. Obligations Upon Payment of CSA Indebtedness. Except as otherwise specifically provided in Article 7 hereof, when and only when Vendor shall have been paid the full indebtedness in respect of the Purchase Price of the

Equipment, together with accrued interest and all other payments as herein provided, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Trustee without further transfer or action on the part of Vendor. However, Vendor, if so requested by Trustee at that time, will, at Trustee's expense, (a) execute an instrument releasing its security interest in the Equipment to Trustee or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such instrument to Trustee 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 Trustee to the Equipment and (c) pay to Trustee any money paid to Vendor pursuant to Article 7 hereof and not theretofore applied as therein provided. Trustee hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by Trustee.

ARTICLE 6

TAXES

6.1. General Tax Indemnification. Whether or not any of the transactions contemplated hereby are consummated, Trustee agrees to pay, or cause to be paid, and to indemnify and hold Vendor harmless from, all taxes (income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), assessments, fees and charges of any nature whatsoever, together with any penalties, fines, additions to tax or interest thereon, howsoever imposed, whether levied or imposed upon Trustee, Owner, Vendor, Lessee, Investor or the trust estate created by the Trust Agreement or otherwise, by any Federal, state or local government or governmental subdivision in the United States of America or by any foreign country or subdivision thereof, upon or with respect to: any

unit of the Equipment or any part thereof; the manufacture, purchase, ownership, delivery, nondelivery, rejection, leasing, possession, sale, use, operation, transfer of title, return or other disposition thereof; the rentals, receipts or earnings arising therefrom; or this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any payment made pursuant to any such agreement, or the property, the income or other proceeds received with respect to the Equipment (all such taxes, assessments, fees, charges, penalties, fines, additions to tax and interest imposed as aforesaid being hereinafter called "Taxes"); excluding, however: (i) Taxes of the United States of America or any state or political subdivision thereof and (if and to the extent that any person indemnified hereunder is entitled to a credit therefor against its United States Federal income taxes) of any foreign country or subdivision thereof, imposed on or measured solely by the net income or excess profits of Vendor, other than Taxes arising out of or imposed in respect of the receipt of indemnification payments pursuant to this Agreement, provided that such Taxes of any foreign country or subdivision thereof incurred as a result of the indemnified party being taxed by such foreign country or subdivision on its worldwide income without regard to the transactions contemplated by this Agreement shall be excluded whether or not the indemnified party is entitled to a credit against its United States Federal income taxes; and (ii) any Taxes imposed on or measured by any fees or compensation received by Vendor; provided, however, that Trustee shall not be required to pay any Taxes during the period it may be contesting the same in the manner provided in Paragraph 6.2 hereof.

The amount which Trustee shall be required to pay with respect to any matter which is subject to indemnification under this Article 6 shall be an amount sufficient to restore the indemnified party hereunder to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such tax, assessment, fee or charge not been imposed.

6.2. Claims; Contests; Refunds. If claim is made against Vendor for any Taxes indemnified against under this Article 6, Vendor shall promptly notify Trustee and Lessee. If reasonably requested by Trustee in writing, Vendor shall,

upon receipt of any indemnity reasonably satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expenses of Trustee, contest in good faith the validity, applicability or amount of such Taxes by (a) resisting payment thereof if possible (provided that the nonpayment thereof does not, in the opinion of Vendor, adversely affect the interest of Vendor in and to the Equipment hereunder), (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. Trustee may also contest, at its own expense, the validity, applicability or amount of such Taxes in the name of Vendor; provided that no proceeding or action relating to such contest shall be commenced (nor shall any pleading, motion, brief or other paper be submitted or filed in the name of Vendor in any such proceeding or action) without the prior written consent of Vendor. If Vendor shall obtain a refund of all or any part of such Taxes previously reimbursed by Trustee in connection with any such contest or an amount representing interest thereon, Vendor shall pay Trustee the amount of such refund or interest net of expenses; provided, however, that no event of default set forth in Article 15 hereof and no event which with notice or lapse of time or both would constitute such an event of default shall have occurred and be continuing.

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

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

ARTICLE 7

MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE

7.1. Maintenance. Trustee shall, at its own cost and expense, maintain and service each unit of Equipment which will include testing, repair and overhaul of each unit of Equipment so that each unit of Equipment will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations and (c) eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads, if such rules are applicable.

7.2. Casualty Occurrences. In the event that any unit of Equipment shall be or become worn out, lost, stolen, destroyed, or, in the opinion of Lessee, irreparably damaged, from any cause whatsoever, or any unit shall be taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of the Lease or for an indefinite period, but only when such period shall exceed the term thereof, or by any other governmental entity resulting in loss of possession by Lessee for a period of 90 consecutive days during the term of the Lease (such occurrences being herein called "Casualty Occurrences"), Trustee shall, promptly after it shall have been informed that such unit has suffered a Casualty Occurrence, cause Vendor to be fully informed in regard thereto. On the next succeeding date for the payment of interest on the CSA Indebtedness (each such date being hereinafter called a "Casualty Payment Date"), Trustee shall pay to Vendor in the case of a Casualty Occurrence a sum equal to the Casualty Value (as hereinafter defined in this Article) of such unit suffering a Casualty Occurrence as of the date of such payment. Trustee shall file, or cause to be filed, with Vendor a certificate setting forth the Casualty Value of such unit. Any money paid to Vendor pursuant to this paragraph shall be applied (after the payment of the interest and principal due on such date) to prepay, without penalty or premium, ratably in accordance with the unpaid balance of each installment, the CSA Indebtedness, together with all interest accrued on the portion of the CSA Indebtedness being prepaid. Trustee shall promptly furnish to Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as Vendor may request. In the event of the requisition for use (which is not a Casu-

alty Occurrence) by the United States Government or any political subdivision thereof of any unit of the Equipment, all of Trustee's obligations hereunder with respect to such unit shall continue to the same extent as if such requisition had not occurred.

7.3. Obligations Upon Payment of Casualty Value. Upon payment by Trustee to 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 Trustee and Vendor's security interest shall terminate and be released, without further transfer or action on the part of Vendor, except that Vendor, if requested by Trustee, will execute and deliver to Trustee, at the expense of Trustee, an appropriate instrument confirming such passage to Trustee of all Vendor's right, title and interest, and the release of Vendor's security interest, in such unit, in recordable form, in order that Trustee may make clear upon the public records the title of Trustee to such unit.

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

7.5. Insurance Proceeds and Condemnation Payments. If Vendor shall receive any insurance proceeds or condemnation payments in respect of any unit suffering a Casualty Occurrence, Vendor shall, subject to Vendor having received payment either from Trustee or as insurance proceeds or condemnation payments of the Casualty Value hereunder, pay such insurance proceeds or condemnation payments to Trustee. All insurance proceeds or condemnation payments received by Vendor in respect of any unit of Equipment not suffering a Casualty Occurrence shall be paid to Trustee upon reasonable proof satisfactory to Vendor that any damage to such unit in

respect of which such proceeds were paid has been fully repaired.

ARTICLE 8

REPORTS AND INSPECTIONS

On or before April 30 in each year, commencing with the year 1980, Trustee shall cause to be furnished to Vendor an accurate statement to the effect set forth in § 8 of the Lease. Vendor shall have the right, by its agents, to inspect the Equipment and Lessee's records with respect thereto at such reasonable times as Vendor may request during the term of this Agreement.

ARTICLE 9

MARKING OF EQUIPMENT

9.1. Marking of Equipment. Trustee will cause each unit of the Equipment to be kept numbered and marked as provided in § 5 of the Lease. Trustee will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such markings shall have been made thereon and will replace or will cause to be replaced promptly any such markings which may be removed, defaced or destroyed. Trustee will not permit the identifying number of any unit of the Equipment to be changed except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with Vendor and filed, recorded and deposited by or on behalf of Trustee in all public offices where this Agreement shall have been filed, recorded and deposited.

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

ARTICLE 10

COMPLIANCE WITH LAWS AND RULES

During the term of this Agreement, Trustee will comply, and will cause every lessee or user of the Equipment to comply, in all respects (including, without limitation, with respect to the use, maintenance and operation of the Equipment) with all laws of the jurisdictions in which its or such lessee's or user's operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, the Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, and with all other applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or modification of or to any part on any unit of the Equipment, Trustee will conform therewith at its own expense; provided, however, that Trustee or Lessee may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Vendor, adversely affect the property or rights of Vendor under this Agreement.

The obligations of Trustee under this Article are subject to the limitations contained in Paragraph 4.8 and Article 21 hereof.

ARTICLE 11

POSSESSION AND USE

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

11.2. Lease Permitted; Lease Subordinate; No Amendment or Termination. Trustee simultaneously is leasing the Equipment to Lessee as provided in the Lease, and the rights of 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 Vendor under this Agreement. The Lease shall not be amended or terminated (except in accordance with its terms) without the prior written consent of Vendor, it being understood and agreed that such consent shall not be unreasonably withheld for changes in the provisions of the Lease which are not intended or necessary to satisfy the obligations of Trustee under the CSA.

ARTICLE 12

PROHIBITION AGAINST LIENS

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

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

12.3. Article 12 Subject to Article 21 Except in Certain Instances. The obligations of Trustee under this Article 12 are subject to the limitations set forth in Paragraph 4.8 hereof and the provisions of Article 21 hereof; provided, however, that Trustee will pay or discharge any and all taxes, claims, liens, charges or security interests claimed by any party from, through or under Trustee or Owner

or their successors or assigns, not arising out of the transactions contemplated hereby or in other documents mentioned herein (but including tax liens arising out of the receipt of the rentals and other proceeds from the Equipment), which, if unpaid, might become a lien, charge or security interest on or with respect to the Equipment, or any unit thereof, or Trustee's or Owner's interest in the Lease and the payments to be made thereunder, but Trustee shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal or administrative proceedings in any reasonable manner and nonpayment thereof does not, in the reasonable opinion of Vendor, adversely affect the security interest of Vendor in or to the Equipment or otherwise under this Agreement or in and to the Lease and the payments to be made thereunder.

ARTICLE 13

INDEMNITIES AND WARRANTIES

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

equipment in connection with the Equipment (whether owned or under the control of Trustee, Lessee or any other person) or resulting or alleged to result from the condition of any thereof; (vi) any violation or alleged violation of any provision of this Agreement or of any agreement, law, rule, regulation, ordinance or restriction, affecting or applicable to the Equipment or the leasing, ownership, use, replacement, adaptation or maintenance thereof; or (vii) any claim arising out of Vendor's retention of a security interest under this Agreement or the Lease Assignment; provided, however, that Trustee shall not be required to pay, protect, indemnify or hold harmless Builder for (i) any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort by Builder, or out of any breach of warranty or failure to perform any covenant hereunder by Builder or (ii) any matter covered by Builder's warranty of material and workmanship and patent indemnification set forth in Annex A hereto. Trustee shall be obligated under this Article 13, irrespective of whether any Indemnified Person shall also be indemnified with respect to the same matter under any other agreement by any other person, and the Indemnified Person seeking to enforce the indemnification may proceed directly against Trustee under this Article 13 without first resorting to any such other rights of indemnification. In case any action, suit or proceeding is brought against any Indemnified Person in connection with any claim indemnified against hereunder, Trustee may and, upon such Indemnified Person's request, will at Trustee's expense resist and defend such action, suit or proceeding, or cause the same to be resisted or defended by counsel selected by Trustee and approved by such Indemnified Person, which approval will not be unreasonably withheld, and, in the event of any failure by Trustee to do so, Trustee shall pay all costs and expenses (including, without limitation, attorneys' fees and expenses) incurred by such Indemnified Person in connection with such action, suit or proceeding. In the event Trustee is required to make any payment under this Article 13, Trustee shall pay such Indemnified Person an amount which, after deduction of all taxes required to be paid by such Indemnified Person in respect of the receipt thereof under the laws of the United States of America or of any political subdivision thereof (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expense indemnified against, and of any other such taxes as determined in the sole discretion of the Indemnified Person), shall be equal to the amount of such payment. Vendor and Trustee agree to give each other promptly

upon obtaining knowledge thereof written notice of any claim or liability hereby indemnified against. Upon the payment in full of any indemnities as contained in this Article 13 by Trustee, and provided that no event of default described in Article 15 hereof (or other event which with lapse of time or notice or both would constitute such an event of default) shall have occurred and be continuing, it shall be subrogated to any right of such Indemnified Person in respect of the matter against which indemnity has been given. Any payments received by such Indemnified Person from any person (other than Trustee) as a result of any matter with respect to which such Indemnified Person has been indemnified by Lessee pursuant to the Lease shall be paid over to Trustee to the extent necessary to reimburse Trustee for indemnification payments previously made in respect of such matter.

13.2. Survival; No Subrogation. The indemnities contained in this Article 13 shall survive the expiration or termination of this Agreement with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any Indemnified Person. None of the indemnities in this Article 13 shall be deemed to create any rights of subrogation in any insurer or third party against Trustee therefor, from or under any Indemnified Person, whether because of any claim paid or defense provided for the benefit thereof or otherwise.

13.3. Trustee Not Released if Equipment Damaged or Lost. Trustee will bear the responsibility for and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

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

The agreement of the parties relating to Builder's warranties of material and workmanship and the agreements of the parties relating to patent indemnification are

set forth in Items 3 and 4 of Annex A hereto.

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

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

13.5. Limitation on Liability. The obligations of Trustee under this Article 13 are subject to the limitations contained in Paragraph 4.8 and Article 21 hereof.

ARTICLE 14

ASSIGNMENTS

14.1. Assignment by Trustee. Trustee will not (a) except as provided in Article 11 hereof, transfer the right to possession of any unit of the Equipment or (b) sell, assign, transfer or otherwise dispose of its rights under this Agreement unless such sale, assignment, transfer or disposition (i) is made expressly subject in all respects to the rights and remedies of Vendor hereunder and (ii) is permitted by, and in accordance with the terms of Article VII of the Trust Agreement. Any such sale, assignment, transfer or disposition which may be made by Trustee to a vendee, assignee or transferee shall be subject to the assumption by such party of all of the obligations of Trustee hereunder.

14.2. Assignment by Vendor. All or any of the rights, benefits and advantages of Vendor under this Agreement, including the right to receive the payments herein provided to be made by Trustee, may be assigned by Vendor and reassigned by any assignee at any time or from time to time.

No such assignment shall subject any assignee to, or relieve Builder from, any of the obligations of Builder to construct and deliver the Equipment in accordance herewith or to respond to its warranties and indemnities referred to in Article 13 hereof, or relieve Trustee of its obligations to Builder contained in Articles 2, 3, 4, 6 and 13 hereof, Annex A hereto and this Article 14, or any other obligation which, according to its terms or context, is intended to survive an assignment.

14.3. Notice of Assignment by Vendor. Upon any such assignment pursuant to Paragraph 14.1 or 14.2 hereof, either the assignor or the assignee shall give written notice to Trustee and Lessee, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the assignor's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by Trustee of the notification of any such assignment, all payments thereafter to be made by Trustee under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

14.4. No Setoff Against CSA Indebtedness Upon Assignment. Trustee recognizes that this Agreement will be assigned to Agent as provided in the CSA Assignment. Trustee expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of Vendor hereunder, and for the purpose of inducing such acquisition, that the rights of Agent to the entire unpaid CSA Indebtedness in respect of the Purchase Price of the Equipment or such part thereof as may be assigned together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever by Trustee arising out of any breach of any obligation of 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 Trustee or Lessee by Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by Trustee or

Lessee, as the case may be, against and only against Builder.

ARTICLE 15

DEFAULTS

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

(a) Trustee shall fail to pay or cause to be paid in full any sum payable by Trustee when payment thereof shall be due hereunder (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of Trustee) and such default shall continue for 15 business days after the date such payment is due and payable; or

(b) Trustee (irrespective of the provisions of Article 4 or 21 hereof or any other provision of this Agreement limiting the liability of Trustee) or Lessee shall, for more than 30 days after Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any other covenant, agreement, term or provision of this Agreement, the CSA Assignment, the Lease or the Lease Assignment or any covenant, agreement, term or provision of the Participation Agreement made for the benefit of Vendor, on its part to be kept and performed, or to make provision satisfactory to Vendor for such compliance; or

(c) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against 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 Lessee under the Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees,

within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(d) any other proceeding shall be commenced by or against Trustee, Owner or Lessee for any relief which includes, or might result in, any modification of the obligations of Trustee hereunder or of Lessee under the Lease under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustment of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the obligations hereunder or under the Lease, the Lease Assignment, the Consent or the Participation Agreement of Trustee, Owner or Lessee, as the case may be), 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 Trustee, Owner or Lessee under this Agreement, the Lease, the Lease Assignment, the Consent and/or the Participation Agreement, as the case may be, shall not have been (and shall not continue to be), duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Trustee, Owner or Lessee, as the case may be, or for its or their respective property in connection with any such proceedings in such manner that such obligations have the same status as expenses of administration and obligations incurred by such trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

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

(f) an Event of Default shall have occurred under the Lease; <u>provided</u>, <u>however</u>, that an Event of Default under § 10.1A of the Lease shall not be deemed to be an event of default hereunder if such default under the Lease causing such Event of Default thereunder is cured by Trustee's remedying such default prior to the expiration of the 15 business day period provided by Paragraph 15.1(a) hereof by making payment of the amount in default under Paragraph 15.1(a) hereof; and <u>provided</u>, <u>further</u>, that Trustee shall not have the right to

remedy more than three such defaults, no more than two of which shall be consecutive, and any additional Events of Default under the Lease shall constitute events of default hereunder whether or not so remedied; or

(g) an event of default shall occur under Article 15 of any of the Other CSAs due to a default by Lessee under the lease related to such Other CSA;

then at any time after the occurrence of such an event of default Vendor may, upon written notice to Trustee and Lessee and upon compliance with any legal requirements then in force and applicable to such action by Vendor, (i) cause the Lease immediately upon such notice to terminate (and Trustee acknowledges the right of Vendor to terminate the Lease), but without affecting the indemnities which by the provisions of the Lease survive its termination and/or (ii) declare (a "Declaration of Default") the entire unpaid CSA Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Penalty Rate to the extent legally enforceable. Upon a Declaration of Default, subject to Article 4 hereof, Vendor shall be entitled to recover judgment for the entire unpaid balance of the CSA Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of Trustee, subject to the provisions of Articles 4 and 21 hereof, wherever situated. Trustee shall promptly notify Vendor of any event of which Trustee has actual knowledge which constituted, constitutes, or with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement. Actual knowledge shall mean knowledge of an officer or employee of the Corporate Trust Department of Trustee.

15.2. Waiver of Defaults. Vendor may, subject to the provisions of Paragraph 1 of the Lease Assignment, at its election, waive any such event of default and its consequences and rescind and annul any Declaration of Default or notice of termination of the Lease by notice to Trustee and Lessee in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default or notice of termination of the Lease had been made or given. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by Trustee that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 16

REMEDIES

16.1. Vendor May Take Possession of Equipment. At any time during the continuance of a Declaration of Default, Vendor may, 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 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 Trustee 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 Trustee, Lessee or any other person and for such purpose may enter upon the premises of Trustee or Lessee or any other premises where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Trustee or Lessee, subject to all mandatory requirements of due process of law.

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

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

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

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

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

16.3. Vendor May Dispose of or Retain Equipment. At any time during the continuance of a Declaration of Default, Vendor (after retaking possession of the Equipment as hereinbefore in this Article 16 provided) may, at its election and upon such notice as is hereinafter set forth, retain the Equipment in satisfaction of the entire CSA Indebtedness and make such disposition thereof as Vendor shall deem fit. Written notice of Vendor's election to retain the Equipment shall be given to Trustee and 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 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 Trustee's rights in the Equipment shall thereupon terminate and all payments made by Trustee or for its account may be retained by Vendor as compensation for the use of the Equipment; provided, however, that if Trustee, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to Vendor the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Trustee; and provided, further, that if Trustee, Lessee or any other persons notified under the terms of this paragraph object in writing to Vendor within 30 days from the receipt of notice of Vendor's election to retain the Equipment, then Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending

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

16.4. Vendor May Sell Equipment; Trustee's Right of Redemption. At any time during the continuance of a Declaration of Default, Vendor, with or without retaking possession thereof, at its election and upon 30 days' notice to Trustee, Lessee and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or one or more of the units thereof, free from any and all claims of Trustee, Lessee or any other party claiming from, through or under Trustee or Lessee, at law or in equity, at public or private sale and with or without advertisement as Vendor may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, Trustee should tender full payment of the total unpaid balance of the CSA Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and Vendor's reasonable attorneys' fees, then upon receipt of such payment, expenses and fees by Vendor, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in Trustee. The proceeds of such sale or other disposition, less the attorneys' fees and any other expenses incurred by Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling or otherwise disposing of the Equipment, shall be credited on the amount due to Vendor under the provisions of this Agreement.

16.5. Sale of Equipment by Vendor. Any sale hereunder may be held or conducted at such place or places and at such time or times as 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 Vendor may determine, so long as such sale shall be in a commercially reasonable manner. Vendor, Trustee or Lessee may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale, provided that Lessee may not so bid if it shall have

caused the Event or Events of Default in respect of which the relevant Declaration of Default was made. Trustee and Lessee shall be given written notice of such sale or the making of a contract for such sale not less than 15 days prior thereto, by telegram or registered mail addressed as provided in Article 20 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the rights of Lessee and Trustee to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that Vendor shall be the purchaser of the Equipment, it shall not be accountable to Trustee or Lessee (except to the extent of surplus money received as provided in Paragraph 16.7 hereof), and in payment of the purchase price therefor Vendor shall be entitled to have credited on account thereof all or any part of sums due to Vendor hereunder.

16.6. Effect of Remedies and Powers and Exercise Thereof. Each and every power and remedy hereby specifically given to 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 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 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 Trustee or Lessee shall not otherwise alter or affect Vendor's rights or Trustee's obligations hereunder. Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect Trustee's obligations or Vendor's rights hereunder with respect to any subsequent payments or default therein.

16.7. Deficiencies. If, after applying all sums of money realized by Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, Trustee shall pay, subject to the limita-

tions of Paragraph 4.8 and Article 21 hereof, the amount of such deficiency to Vendor upon demand, together with interest thereon from the date of such demand to the date of payment at the Penalty Rate, and, if Trustee shall fail to pay such deficiency, Vendor may bring suit therefor and shall, subject to the limitations of Paragraph 4.8 and Article 21 hereof, be entitled to recover a judgment therefor against Trustee. If, after applying as aforesaid all sums realized by Vendor, there shall remain a surplus in the possession of Vendor, such surplus shall be paid to Trustee.

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

16.9. Remedies Subject to Mandatory Legal Requirements. 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

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

17.2. Waiver of Notices. Except as otherwise provided in this Agreement, Trustee, to the full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any one or more units thereof, and any other requirements as

to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 18

RECORDING

Trustee will cause this Agreement, the CSA Assignment, the Lease, the Lease Assignment, any further assignments hereof or thereof and any amendments or supplements hereto or thereto to be filed and recorded as provided in § 15 of the Lease.

ARTICLE 19

ARTICLE HEADINGS; EFFECT AND MODIFICATION OF AGREEMENT

All article and paragraph headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

Except for the Participation Agreement, the Trust Agreement and the CSA Assignment, this Agreement, including the Annexes hereto, exclusively and completely states the rights of Vendor and Trustee with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized representatives of Vendor, Trustee and, if such variation or modification shall adversely affect its interests hereunder, Builder.

ARTICLE 20

NOTICE

Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered, telexed or mailed to it by first class mail, postage

prepaid, at the following addresses:

(a) to Lessee, at 400 West Madison Street, Chicago, Illinois 60606, attention of Assistant Vice President-Finance;

(b) to Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Corporate Trust Department;

(c) to Owner at its address specified in Item 6 of Annex A hereto;

(d) to Builder, at its address specified in Item 1 of Annex A hereto;

(e) to Agent, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, attention of Corporate Trust Department; and

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

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

ARTICLE 21

IMMUNITIES; SATISFACTION OF UNDERTAKINGS

21.1. No Recourse Against Certain Persons. No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, as such, past, present or future, of the parties hereto, whether by virtue of any constitutional provision, statute or rule of law, or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of such incorporators, stockholders, directors or officers, as such, being forever released as a condition of and as consideration for the execution of this Agreement.

21.2. Satisfaction of Certain Covenants. The obligations of Trustee under Paragraph 16.2 and under Articles 3, 6, 7 (other than the second, third and fifth sentences of Paragraph 7.2), 8, 9, 10, 12 (other than the proviso to the last paragraph thereof), 13 and 18 hereof shall be deemed in all respects satisfied by Lessee's undertakings contained in the Lease. Trustee shall not have any responsibility for 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. No waiver or amendment of Lessee's undertakings under the Lease shall be effective unless joined in by Vendor.

21.3. No Personal Liability of Trustee. Each of the warranties, representations, undertakings and agreements herein made on the part of Trustee are made and intended not as personal warranties, representations, undertakings and agreements by the financial institution acting as Trustee or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Agreement is executed and delivered by said institution not in its own right but solely in the exercise of the powers expressly conferred upon it as trustee under the Trust Agreement; and except in the case of wilful misconduct or gross negligence, no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution or Owner (except, with respect to each such party, in connection with the payment or discharge of claims, liens, charges or security interests claimed from, through or under such party or its successors and assigns pursuant to the proviso to Paragraph 12.3 hereof and except, with respect to Owner, pursuant to Section 1.03 and the last paragraph of Section 5.01 of the Trust Agreement), on account of this Agreement or on account of any warranty, representation, undertaking or agreement of the said institution or Owner hereunder, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by Vendor and by all persons claiming by, through or under Vendor; provided, however, that Vendor or any person claiming by, through or under any of them, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Nothing contained in this Paragraph 21.3 shall limit, restrict or impair the rights of Vendor to take all actions to enforce the rights and remedies provided for herein and to bring suit and obtain a judgment against

Trustee (provided that neither Trustee in its fiduciary or individual capacity nor Owner shall have any personal liability on any such judgment and the satisfaction thereof shall be limited to the Trust Estate, including any interest therein of Trustee or Owner) or to foreclose the lien and security interest created by this Agreement or otherwise realize upon the Trust Estate, including the right to proceed against the Equipment or Lessee under the Lease.

Trustee agrees not to enter into any supplement or amendment of the Trust Agreement except as provided in Section 8.01 thereof as in effect on the date of execution and delivery hereof.

ARTICLE 22

LAW GOVERNING

The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303 and such additional rights, if any, arising out of the filing, recording or depositing hereof 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

EXECUTION

This Agreement may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to Agent pursuant to the CSA Assignment shall be deemed the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Agreement is dated as of the date first above written, the actual date or dates of execution hereof by the parties hereto is or are, respectively,

the date or dates stated in the acknowledgments hereto annexed.

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

GENERAL MOTORS CORPORATION
(Electro-Motive Division),

by _____
Vice President

[Corporate Seal]

Attest:

_____
Assistant Secretary

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Trustee,

by

_____
Authorized Officer

[Corporate Seal]

Attest:

_____
Authorized Officer

STATE OF ~~ILLINOIS~~ MICHIGAN,)
) ss.:
COUNTY OF ~~COOK~~ WAYNE,)

On this 19TH day of November 1979, before me personally appeared H. L. SMITH, to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

AUDREY A. BEZZ
Notary Public Macomb County, Mich.
Acting in Wayne Mich.
My Commission Expires June 27, 1981

Audrey A. Bezz acting in Wayne County
AUDREY A. BEZZ Notary Public

[Notarial Seal]

My Commission expires June 27, 1981

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of November 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE I

Allocation Schedule of Each
$1,000,000 of CSA Indebtedness
Payable in (i) One Interim
Payment on January 15, 1980, and
(ii) 28 Semiannual Installments
Commencing on July 15, 1980

Installment Number		Total Payment $	Interest Payment $	Principal Recovery $	Remaining Principal Balance $
(Interim Payment)	1/1980	*	*	-0-	1,000,000.00
1	7/1980	73,232.69	56,875.00	16,357.69	983,642.31
2	1/1981	73,232.69	55,944.66	17,288.03	966,354.28
3	7/1981	73,232.69	54,961.40	18,271.29	948,082.99
4	1/1982	73,232.69	53,922.22	19,310.47	928,772.52
5	7/1982	73,232.69	52,823.94	20,408.75	908,363.77
6	1/1983	73,232.69	51,663.19	21,569.50	886,794.27
7	7/1983	73,232.69	50,436.42	22,796.27	863,998.00
8	1/1984	73,232.69	49,139.89	24,092.80	839,905.20
9	7/1984	73,232.69	47,769.61	25,463.08	814,442.12
10	1/1985	73,232.69	46,321.40	26,911.29	787,530.83
11	7/1985	73,232.69	44,790.82	28,441.87	759,088.96
12	1/1986	73,232.69	43,173.18	30,059.51	729,029.45
13	7/1986	73,232.69	41,463.55	31,769.14	697,260.31
14	1/1987	73,232.69	39,636.68	33,376.01	663,684.30
15	7/1987	73,232.69	37,747.04	35,485.65	628,198.65
16	1/1988	73,232.69	35,728.80	37,503.89	590,694.76
17	7/1988	73,232.69	33,595.76	39,636.93	551,057.83
18	1/1989	73,232.69	31,341.41	41,891.28	509,166.55
19	7/1989	73,232.69	28,958.85	44,273.84	464,892.71
20	1/1990	73,232.69	26,440.77	46,791.92	418,100.79
21	7/1990	73,232.69	23,779.48	49,453.21	368,647.58
22	1/1991	73,232.69	20,966.83	52,265.86	316,381.72
23	7/1991	73,232.69	17,994.21	55,238.48	261,143.24
24	1/1992	73,232.69	14,852.52	58,380.17	202,763.07
25	7/1992	73,232.69	11,532.15	61,700.54	141,062.53
26	1/1993	73,232.69	8,022.93	65,209.76	75,852.77
27	7/1993	73,232.69	4,314.13	68,918.56	6,934.21
28	1/1994	7,328.30	394.09	6,933.92	0.00
Total		1,988,086.62	988,086.62	1,000,000.00	

* Interest at the rate of 11-3/8% per annum from and including the Deposit Date (as defined in the Participation Agreement) to January 15, 1980.

ANNEX A

to

Conditional Sale Agreement

Item 1: General Motors Corporation (Electro-Motive Division), La Grange, Illinois 60525.

Item 2: The Equipment hereto shall be settled for in one Group on December 14, 1979, and in a second Group on January 4, 1980, or, in each case, on another date fixed pursuant to Paragraph 4.2 of the Conditional Sale Agreement to which this Annex A is attached (hereinafter in this Annex A called this Agreement).

Item 3: Builder warrants that its Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications therefor referred to in Article 2 of this Agreement and is suitable for the ordinary purposes for which such Equipment is used and warrants each unit of its Equipment to be free from defects in material and workmanship which may develop under normal use and service within two years from date of delivery of such unit or before such unit has been operated 250,000 miles, whichever event shall first occur. The Builder agrees to correct such defects, which examination shall disclose to its satisfaction to be defective, by repair or replacement F.O.B. factory and such correction shall constitute fulfillment of its obligation with respect to such defect under this warranty.

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

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

The Builder further agrees with Trustee that neither the inspection as provided in Article 3 of this Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 3 shall be deemed a waiver

or modification by Trustee of any of its rights under this Item 3.

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

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

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

Item 5: The Maximum Purchase Price referred to in Article 4 of the Agreement is $6,557,922.

Item: 6 Mercantile Trust Company, N.A.
Mercantile Tower
721 Locust
St. Louis, Missouri 63101

Attention of David T. Stoecker

ANNEX B

to

Conditional Sale Agreement

Type	Builder's Specification	Builder's Plant	Quantity	Estimated Base Price	Estimated Total Base Price	Road Numbers (Inclusive)	Estimated Time of Delivery
GP-38-2 locomotives	8090	McCook, Illinois	12	$520,470	$6,245,640	CNW 4600 through CNW 4611	November 1979

Place of delivery: Freight yard of Lessee at Proviso, Illinois

ANNEX C
to
Conditional Sale Agreement (B)

[CS&M Ref. 5237-010]

LEASE OF RAILROAD EQUIPMENT

(B)

Dated as of October 15, 1979

between

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,
Lessee,

and

FIRST SECURITY STATE BANK,
Trustee.

[Covering 12 GM Locomotives]

LEASE OF RAILROAD EQUIPMENT

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

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LEASE OF RAILROAD EQUIPMENT dated as of October 15, 1979, between CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Lessee"), and FIRST SECURITY STATE BANK, a Utah banking corporation ("Trustee"), not in its individual capacity but solely as Trustee under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with the corporation named as "Owner" in Schedule 1 hereto ("Owner").

WHEREAS Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with GENERAL MOTORS CORPORATION (Electro-Motive Division) ("Builder"), wherein Builder has agreed to manufacture, sell and deliver to Trustee the units of railroad equipment described in Schedule 1 hereto (the "Equipment");

WHEREAS Builder is assigning its interests in the CSA to FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, acting as Agent (hereinafter, together with its successors and assigns and, where not inconsistent with the provisions hereof, Investors, as hereinafter defined, called "Agent") for certain institutional investors under a Participation Agreement dated as of the date hereof (the "Participation Agreement") among Agent, Trustee, Owner, Lessee and the institutional investors named in Appendix I thereto (individually "Investor" and, together with any assignees, collectively "Investors");

WHEREAS Lessee desires to lease such number of units of the Equipment as are delivered, accepted and settled for under the CSA (the "Units") at the rentals and for the terms and upon the conditions hereinafter provided; and

WHEREAS Trustee will assign this Lease for security to Agent pursuant to an Assignment of Lease and Agreement dated as of the date hereof (the "Lease Assignment");

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 Lessee, Trustee hereby leases the Units to Lessee upon the following terms and

conditions:

§ 1. NET LEASE

This Lease is a net lease. Lessee's obligation to pay all rentals and other amounts hereunder shall be absolute and unconditional and, except as herein specifically provided, Lessee shall not be entitled to any abatement of rent or such other amounts, reduction thereof or setoff against rent or such other amounts, including, but not limited to, counterclaims, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of Lessee against Trustee under this Lease or under the CSA, or against Builder or Agent or otherwise; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of Trustee or 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 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 of or any bankruptcy, reorganization or similar proceeding against 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 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, 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 Lessee hereunder shall be final and Lessee shall not seek to recover all or any part of such payment from Trustee or Agent for any reason whatsoever.

§ 2. DELIVERY AND ACCEPTANCE OF UNITS

Trustee hereby appoints Lessee its agent for

inspection and acceptance of the Units pursuant to, and in accordance with, the CSA. Trustee will cause the Units to be delivered to Lessee at the point within the United States of America at which the Units are delivered to Trustee under the CSA. Upon such delivery, Lessee will cause an employee of Lessee to inspect the same, and if such Unit is found to be acceptable, to accept delivery of such Unit and Lessee shall execute and deliver to Trustee a certificate of acceptance (the "Certificate of Acceptance") in accordance with the provisions of Paragraph 3.4 of the CSA, stating that such Unit has been inspected and accepted on behalf of Lessee and Trustee on the date of such Certificate of Acceptance and is marked in accordance with § 5 hereof, whereupon, except as provided in the next sentence hereof, such Unit shall be deemed to have been delivered to and accepted by Lessee and shall be subject thereafter to all the terms and conditions of this Lease. The delivery, inspection and acceptance hereunder of any Unit excluded from the CSA pursuant to Paragraph 4.1 thereof shall be null and void and ineffective to subject such Unit to this Lease. Lessee agrees that it will not place any Unit in service prior to the date on which such Unit shall have been delivered to and accepted by Lessee on behalf of Trustee.

§ 3. RENTALS

3.1. Amount and Date of Payment. Lessee agrees to pay to Trustee as rental for each Unit subject to this Lease one interim and 30 consecutive semiannual payments. The interim payment for each Unit subject to this Lease is payable on January 15, 1980, and shall be in an amount equal to the product of the Purchase Price (as defined in Paragraph 4.1 of the CSA) for such Unit multiplied by .031164% for each day elapsed from and including the Closing Date (as defined in Paragraph 4.2 of the CSA) for such Unit under the CSA to, but not including, January 15, 1980. The 30 semiannual payments are payable on January 15 and July 15 in each year, commencing July 15, 1980, to and including January 15, 1995, and shall each be in an amount equal to 4.9725% of the Purchase Price of each such Unit then subject to this Lease; provided, however, that for each Unit delivered and accepted after December 31, 1979, the rentals thereafter payable by Lessee in respect of each such Unit shall be increased by such amount as shall, in the reasonable opinion of Owner, cause Owner's after-tax economic yield (computed on the same assumptions, including tax rates, and utilizing the same methods as were utilized by Owner in originally evaluating the transaction contemplated by the Participation Agreement) to equal the after-tax economic yield that would have been

realized by Owner if such Unit had been delivered and accepted prior to December 31, 1979.

Lessee shall pay as additional rental the following: (1) an amount equal to any amounts payable by Trustee pursuant to clause (a) of the final paragraph of Paragraph 9 of the Participation Agreement on such date and an amount equal to any amounts payable by Trustee pursuant to the first paragraph of Paragraph 9 of the Participation Agreement when such payments are due and payable by Trustee; provided, however, that such payment shall be decreased by an amount equal to any funds payable by Agent to Trustee pursuant to the third paragraph of Paragraph 9 of the Participation Agreement to the extent such funds are credited by Agent against such payment; provided further, however, that if such funds payable by Agent to Trustee exceed the amount so payable by Lessee, then that portion of the rentals payable by Lessee under this Lease in an amount equal to such excess shall be deemed to be an overpayment of rental and Trustee shall refund such excess to Lessee when received from Agent; and (2) on January 15, 1980, an amount equal to any amounts payable by Trustee pursuant to clause (b) of such final paragraph of Paragraph 9 on such date.

The rental payments hereinbefore set forth are subject to adjustment pursuant to § 16 hereof.

3.2. Payments on Nonbusiness Days. If any of the rental payment dates referred to in § 3.1 above is not a business day, the rental payment otherwise payable on such date shall be payable on the next succeeding business day. The term "business day" as used herein means a calendar day, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois, are authorized or obligated to remain closed.

3.3. Instructions To Pay Agent and Trustee. Trustee irrevocably instructs Lessee to make all the payments provided for in this Lease, including, but not limited to, the payments provided for in this § 3 and in § 6, § 7 and § 9 hereof, but excluding payments due to Trustee by reason of § 16 hereof, (i) for so long as the CSA shall remain in effect, at the principal office of Agent, for the account of Trustee in care of Agent, with instructions to Agent (a) first, to apply such payments to satisfy the obligations of Trustee under the CSA, and (b) second, so long as no event of default or event which, after the lapse of time or demand provided

for in the CSA, or both, could constitute an event of default under the CSA shall have occurred and be continuing, to pay any balance promptly to Trustee at such place as Trustee shall specify in writing, and (ii) if the CSA shall no longer be in effect, to Trustee or as directed by Trustee. Lessee agrees to make each payment provided for herein as contemplated by this paragraph in Federal or other funds immediately available to Agent by 10:30 a.m., Chicago time, on the date such payment is due.

§ 4. TERM OF LEASE

4.1. Beginning and Termination; Survival. The term of this Lease as to each Unit shall begin on the date of delivery and acceptance of such Unit hereunder and, subject to the provisions of §§ 7 and 10 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due pursuant to § 3.1 hereof. The obligations of Lessee hereunder (including, but not limited to, the obligations under §§ 3, 6, 7, 9, 11, 14, 16 and 17 hereof) shall survive the expiration of the term of this Lease.

4.2. Rights and Obligations of Lessee Subject to CSA. Notwithstanding anything to the contrary contained herein, all rights and obligations of Lessee under this Lease and in and to the Units are subject to the rights of Agent under the CSA. If an event of default should occur under the CSA, Agent may terminate this Lease (or rescind its termination), all as provided therein, without affecting the indemnities which by the provisions of this Lease survive the termination of its term, all as provided herein.

§ 5. IDENTIFICATION MARKS

Lessee (at its own expense) will cause each Unit to be kept numbered with the road number set forth in Schedule 1 hereto, or in the case of any Unit not there listed, such road 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 each side of each Unit, in letters not Less than one inch in height, the words "OWNERSHIP SUBJECT TO A SECURITY AGREEMENT FILED WITH THE INTERSTATE COMMERCE COMMISSION", or other appropriate words designated by Agent, with appropriate changes thereof and additions

thereto as from time to time may be required by law in order to protect Trustee's and Agent's title to and interest in such Unit and the rights of Trustee under this Lease and of the rights of Agent under the CSA. 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 and will replace promptly any such markings which may be removed, defaced or destroyed. Lessee will not change the road number of any Unit unless and until (i) a statement of new number or numbers to be substituted therefor shall have been filed with Agent and Trustee and duly filed, recorded and deposited by Lessee in all public offices where this Lease and the CSA shall have been filed, recorded and deposited and (ii) Lessee shall have furnished Agent and Trustee an opinion of counsel, satisfactory to Agent and Trustee, to such effect and to the further effect that such acts are sufficient for the proper protection, to their satisfaction, of Agent's and Trustee's respective interests in the Units. The Units may be lettered with the names or initials or other insignia customarily used by Lessee or its affiliates.

Except as provided in the preceding paragraph, 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.

§ 6. GENERAL TAX INDEMNIFICATION

All payments to be made by Lessee hereunder will be free of expense to Owner and Trustee for collection or other charges and will be free of expense to Owner and Trustee with respect to the amount of any Federal, state, local or foreign taxes (including income, gross receipts, franchise, sales, use, property [real or personal, tangible or intangible], stamp and minimum [imposed under Section 56 of the Internal Revenue Code of 1954, as amended] taxes), or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "impositions") hereafter levied or imposed upon or in connection with or measured by any Unit or this Lease or any manufacture, sale, rental, ownership, possession, use, payment, shipment, delivery, nondelivery, rejection, transfer of title, return or other disposition of the Equipment (other than a disposition by Owner or Trustee following return of any Unit in accordance with § 14 hereof), under the terms hereof or the CSA (other than any United States Federal income tax [and, to the extent that Owner receives credit therefor against its United States Federal income tax liability, any foreign income

tax] on or measured by the net income of Trustee in consequence of the receipt of payments provided for herein and other than the aggregate of all state or local taxes on or measured by the net income of Owner or Trustee based on such receipts and value added taxes in lieu of such net income taxes up to the amount of any such taxes which would be payable to the state and city in which Owner or Trustee, as the case may be, has its principal place of business without apportionment to any other state, and other than any state franchise tax which is not based on or measured by net income, except any such tax which is in substitution for, or relieves Lessee from the payment of, taxes which Lessee would otherwise be obligated to pay pursuant to this § 6), all of which impositions Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein. Lessee will also pay promptly all impositions which may be imposed upon any Unit or for the use or operation thereof or upon the receipts or earnings arising therefrom (except as provided above) or upon Trustee by reason of its ownership thereof or Owner by reason of its interest therein 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 Trustee or the interest of Owner or Trustee or result in a lien upon any such Unit; provided, however, that Lessee shall be under no obligation to pay any impositions of any kind so long as such imposition remains unpaid and Lessee is contesting in its own name and in good faith and by appropriate legal or administrative proceedings such impositions, or Trustee or Owner, as the case may be, is required to contest such impositions as provided in this § 6, and the nonpayment thereof does not, in the reasonable opinion of such party, adversely affect the title, property or rights of Trustee or Owner hereunder or Trustee or Agent under the CSA. Lessee agrees to give such party notice of such contest brought in Lessee's name within 30 days after institution thereof and Trustee agrees to provide such information as may be reasonably requested by Lessee in furtherance of such contest. If any impositions shall have been charged or levied against such party directly and paid by such party, Lessee shall pay such party on presentation of an invoice therefor if such party shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for such party) or Lessee shall have approved the payment thereof, and such party agrees to give Lessee written notice promptly after it first obtains knowledge of the making of such charge or levy, and agrees to take such other action as may reasonably be requested by Lessee for the purpose of contesting payment or obtaining refund of all or a portion of such imposition, as hereinafter provided in this § 6.

In the event that Trustee shall become obligated to make any payment to Builder or Agent or otherwise pursuant to any corresponding provision of the CSA not covered by the foregoing paragraph of this § 6, Lessee shall pay such additional amounts (which shall also be deemed impositions hereunder) to Trustee to fulfill completely its obligations pursuant to said provision; provided, however, that Trustee shall have contested (if required to do so under this § 6) such impositions in good faith and to the extent permitted under the CSA.

In the event any returns, statements or reports with respect to impositions involving any Unit are required to be made, Lessee will make such returns, statements and reports in such manner as to show the interest of Trustee, Owner and Agent in such Units, as shall be satisfactory to Trustee and Agent or, where not so permitted, will notify Trustee, Owner and Agent of such requirement and will prepare and deliver such reports to Trustee, Owner and Agent within a reasonable period of time prior to the time such reports are to be filed in such manner as shall be satisfactory to Trustee, Owner and Agent.

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

If claim is made against any indemnified party for any impositions indemnified against under this § 6, such party shall promptly notify Lessee. If reasonably requested by Lessee in writing, such indemnified party shall, upon receipt of indemnity satisfactory to it for all costs, expenses, losses, legal and accountants' fees and disbursements, penalties, fines, additions to tax and interest, and at the expense of Lessee, contest in good faith the validity, applicability or amount of such impositions by (a) resisting payment thereof if possible, (b) not paying the same except under protest, if protest is necessary and proper, and (c) if payment is made, using reasonable efforts to obtain a refund thereof in appropriate administrative or judicial proceedings, or both. Lessee may also contest, or cause to be contested, at its own expense, the validity, applicability or amount of such impositions in the name of such indemnified party, provided that no proceeding or action relating to such contest shall be commenced

(nor shall any pleading, motion, brief or other paper be submitted or filed in the name of such indemnified party in any such proceeding or action) without the prior written consent of such indemnified party, which consent shall not be unreasonably withheld. If such indemnified party shall obtain a refund of all or any part of such impositions previously reimbursed by Lessee in connection with any such contest or an amount representing interest thereon applicable to the amount paid by Lessee and the period of such payment, such indemnified party shall pay to Lessee the amount of such refund or interest net of expenses, but only if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing.

Lessee shall, whenever reasonably requested by Trustee or Owner, submit to such party copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to such party of Lessee's performance of its duties under this § 6. Lessee shall also furnish promptly upon request such data as such party reasonably may require to permit such party's compliance with the requirements of taxing jurisdictions.

The amount which Lessee shall be required to pay with respect to any imposition which is subject to indemnification under this § 6 shall be an amount sufficient to restore the indemnified party to the same net after-tax rate of return and after-tax cash position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that such indemnified party would have been in had such imposition not been imposed.

§ 7. MAINTENANCE; CASUALTY OCCURRENCES; INSURANCE

7.1. Maintenance. Lessee at its own expense will maintain and service each Unit (including any parts installed or replacements made to any Unit and considered an Addition [as defined in § 9.2 hereof] hereunder) which will include testing, repair and overhaul of each Unit so that each Unit will remain (a) in as good operating condition as when delivered (ordinary wear and tear excepted), (b) in compliance with any and all applicable laws and regulations, and (c) eligible for railroad interchange in accordance with the interchange rules of the Association of American Railroads, if such rules are applicable.

7.2. Definition of Casualty Occurrence; Payments. In the event that any Unit shall be or become worn out, lost, stolen, destroyed, or irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise by the United States Government for a stated period which shall exceed the then remaining term of this Lease, or by any other governmental entity resulting in loss of possession by Lessee for a period of 90 consecutive days during the term hereof (such occurrences being hereinafter called "Casualty Occurrences"), prior to the return of such Unit in the manner set forth in § 14 hereof, Lessee shall promptly and fully notify Trustee and Agent with respect thereto. On the rental payment date next succeeding such notice Lessee shall pay to Trustee an amount equal to the rental payment or payments in respect of such Unit due and payable on such date plus a sum equal to the Casualty Value (as defined in § 7.3 hereof) of such Unit as of the date of such payment in accordance with the schedule referred to below. Upon the making of such payment by 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 (except in the case of the loss, theft, or complete destruction of such Unit) Trustee shall be entitled to recover possession of such Unit and Lessee shall pay all costs of removal of such Unit and of freight to the place designated pursuant to § 14 hereof.

7.3. Amount of Casualty Value. The "Casualty Value" of each Unit as of the payment date on which payment is to be made as aforesaid shall be an amount equal to that percentage of the Purchase Price of such Unit as is set forth in Schedule 2 hereto opposite such date; provided, however, that if the Casualty Value for any Unit as of such payment date as determined pursuant to Schedule 2 reflects an amount representing investment credit recapture to Owner that is greater or lesser than the actual amount of investment credit recapture incurred by Owner as a result of the Casualty Occurrence to such Unit, the Casualty Value for such Unit as so determined shall be appropriately decreased or increased so as to reflect the actual amount of investment credit recapture incurred by Owner as a result of the Casualty Occurrence to such Unit.

Whenever any Unit shall suffer a Casualty Occurrence after termination of this Lease at the expiration of the original or any extended term hereof and before such Unit shall have been returned in the manner provided in § 14

hereof, Lessee shall promptly and fully notify Trustee with respect thereto and pay to Trustee an amount equal to the Casualty Value of such Unit, which shall be 20% of the Purchase Price of such Unit (unless such termination occurs after the term of this Lease has been extended pursuant to § 13 hereof, in which case the amount of such Casualty Value shall be as agreed upon between Trustee and Lessee at the time of such extension). Upon the making of any such payment by Lessee in respect of any Unit (except in the case of the loss, theft or complete destruction of such Unit), Trustee shall be entitled to recover possession of such Unit.

7.4. Lessee Agent for Disposal. Trustee hereby irrevocably appoints Lessee as agent and Lessee hereby accepts such appointment as agent to dispose of any Unit suffering a Casualty Occurrence or any component thereof, and Lessee further agrees to use its best efforts to dispose of any such Unit at the best price obtainable on an "as is, where is" basis. Provided that Lessee has previously paid the Casualty Value to Trustee, Lessee shall be entitled to the proceeds of such sale to the extent they do not exceed the Casualty Value of such Unit, and shall pay any excess to Trustee.

7.5. Requisition by United States Government. In the event of the requisition for use (which is not a Casualty Occurrence) by the United States Government or any political subdivision thereof (the "Government") of any Unit during the term of this Lease, all of Lessee's obligations under this Lease with respect to such Unit shall continue to the same extent as if such requisition had not occurred, except that if such Unit is returned by the Government at any time after the end of the term of this Lease, Lessee shall be obligated to return such Unit to Trustee pursuant to § 11 or 14 hereof, as the case may be, promptly upon such return by the Government rather than at the end of the term of this Lease, but Lessee shall in all other respects comply with the provisions of said § 11 or 14, as the case may be, with respect to such Unit. All payments received by Trustee or Lessee from the Government for the use of such Unit during the term of this Lease shall be paid over to, or retained by, Lessee provided no Event of Default (or other event which after notice or lapse of time or both would become an Event of Default) shall have occurred and be continuing; and all payments received by Trustee or Lessee from the Government for the use of such Unit after the term of this Lease, shall be paid over to, or retained by, Trustee.

7.6. No Release. Except as hereinabove in this § 7 provided, Lessee shall not be released from its obligations

hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Unit from and after delivery and acceptance thereof by Lessee hereunder.

7.7. Insurance To Be Maintained. Lessee will, at all times prior to the return of the Equipment to Trustee, at its own expense, cause to be carried and maintained property insurance and public liability insurance in respect of the Units at the time subject hereto, in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by Lessee in respect of similar equipment owned by it. Any policies of insurance carried in accordance with this paragraph shall name Agent, Trustee and Owner as additional insureds as their respective interests may appear. Upon reasonable request, Lessee shall supply Agent, Trustee and Owner with a statement naming such policies and the carriers and underwriters thereof and specifying in reasonable detail the coverage, limitations and deductibles with respect thereto. If Trustee shall receive any insurance proceeds or condemnation payments in respect of a Unit suffering a Casualty Occurrence, Trustee shall, subject to Lessee's having made payment of the Casualty Value in respect of such Unit, pay such proceeds or condemnation payments to Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by Lessee and any balance of such proceeds or condemnation payments shall remain the property of Trustee. All insurance proceeds received by Trustee from Lessee's insurance coverage in respect of any Unit not suffering a Casualty Occurrence shall be paid to Lessee upon proof satisfactory to Trustee that any damage to such Unit in respect of which such proceeds were paid has been fully repaired.

7.8. Economic Casualty. Provided that CSA Indebtedness is not outstanding, (a) during the period from January 15, 1994, to the end of the original term of this Lease, in the event Lessee shall in its reasonable judgment determine that the Units have become obsolete or shall be surplus to its requirements or it is not feasible to comply with the provisions of § 9.2 hereof (other than in the case of the occurrence and continuance of an Event of Default hereunder except for an Event of Default resulting from a violation of § 9.2 hereof), and (b) during any extended term of this Lease pursuant to the provisions of the first paragraph of § 13 hereof with respect to the Units, Lessee shall have the right at its option, on at least 90 days' prior written notice to Trustee, to terminate this Lease as to the Units (subject to the provisions for the survival of indemnification obligations contained in §§ 6 and 9 hereof) as of the

next scheduled rental payment date upon payment to Trustee of the economic casualty value of the Units as determined pursuant to the economic casualty value schedule of Schedule 2 hereof, and Lessee shall return the Units to Trustee as soon as reasonably practical in as good operating condition as when delivered (ordinary wear and tear excepted), and the Units shall be treated as having suffered a Casualty Occurrence; provided, however, that during the 90-day period following such notice, Lessee shall use its best efforts to dispose of the Units at the best price obtainable on an "as is, where is" basis.

§ 8. REPORTS AND INSPECTION

On or before April 30 in each year, commencing with the calendar year 1980, Lessee will furnish to Trustee and Agent (a) an accurate statement (i) setting forth as at the preceding December 31 the amount, description and numbers of all Units then leased hereunder and covered by the CSA, the amount, description and numbers of all Units that have suffered a Casualty Occurrence during the preceding calendar year or are then undergoing repairs (other than running repairs) or then withdrawn from use pending such repairs (other than running repairs) and such other information regarding the condition and state of repair of the Units as Trustee or Agent may reasonably request, (ii) stating that, in the case of all Units repainted or repaired during the period covered by such statement, the numbers and markings required by § 5 hereof and by the CSA have been preserved or replaced and (iii) setting forth a description of the insurance in effect with respect to the Equipment pursuant to § 7 hereof and stating that such insurance insures the Equipment in amounts (subject to customary deductibles) and against risks customarily insured against by railroad companies in respect of similar equipment, and, in any event, comparable in amounts and against risks customarily insured against by Lessee in respect of similar equipment owned by it, and (b) a certification of insurance coverage from Lessee's independent broker stating the amounts of such insurance in effect and the amount of deductible. Trustee, at its sole cost and expense, shall have the right by its agents, to inspect the Units and Lessee's records with respect thereto at such reasonable times as Trustee may request during the continuance of this Lease. Lessee shall promptly notify Trustee and Agent of any material changes or any material proposed changes of which Lessee has knowledge in its insurance coverage in effect with respect to the Equipment pursuant to § 7 hereof.

§ 9. DISCLAIMER OF WARRANTIES; COMPLIANCE WITH LAWS AND RULES; INDEMNIFICATION

9.1. Disclaimer of Warranties. TRUSTEE AND OWNER MAKE 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 LESSEE HEREUNDER, AND TRUSTEE AND OWNER MAKE NO WARRANTY OF MERCHANTABILITY OR FITNESS OF THE UNITS FOR ANY PARTICULAR PURPOSE OR AS TO TITLE TO THE UNITS OR ANY COMPONENT THEREOF, OR AS TO LESSEE'S RIGHT TO QUIET ENJOYMENT THEREOF (EXCEPT AS TO ACTS OF TRUSTEE), OR ANY OTHER REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY UNIT, EITHER UPON DELIVERY THEREOF TO LESSEE OR OTHERWISE, it being agreed that all such risks, as between Trustee and Lessee, are to be borne by Lessee; but Trustee hereby irrevocably appoints and constitutes 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 the account of Trustee and/or Lessee, as their interests may appear, at Lessee's sole cost and expense, whatever claims and rights Trustee may have against Builder under the provisions of Items 3 and 4 of Annex A of the CSA; provided, however, that if at any time an Event of Default shall have occurred and be continuing, Trustee may assert and enforce, at Lessee's sole cost and expense, such claims and rights. Neither Owner nor Trustee shall have any responsibility or liability to Lessee or any other person with respect to any of the following: (i) any liability, loss or damage caused or alleged to be caused directly or indirectly by any Units or by any inadequacy thereof or deficiency or defect therein or by any other circumstances in connection therewith; (ii) the use, operation or performance of any Units or any risks relating thereto; (iii) any interruption of service, loss of business or anticipated profits or consequential damages; or (iv) the delivery, operation, servicing, maintenance, repair, improvement or replacement of any Units. Lessee's delivery of a Certificate of Acceptance shall be conclusive evidence as between Lessee and Trustee that the Units described therein are in all the foregoing respects satisfactory to Lessee, and Lessee will not assert any claim of any nature whatsoever against Trustee based on any of the foregoing matters.

9.2. Compliance with Laws and Rules. Lessee agrees, for the benefit of Trustee and Agent, to comply in all respects (including, without limitation, with respect to the use, maintenance and operation of each Unit) with all

applicable laws of the jurisdictions in which its 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 and with all other applicable interchange rules, to the extent that such laws and rules affect the title, operation or use of the Units, and in the event that, prior to the expiration of this Lease or any renewal hereof, such laws or rules require any alteration, replacement, addition or modification of or to any part on any Unit, Lessee will conform therewith at its own expense; provided, however, that Lessee may at its own expense in good faith contest the validity or application of any such law or rule in any reasonable manner which does not, in the reasonable opinion of Trustee or Agent, adversely affect the property or rights of Trustee or Agent under this Lease or under the CSA.

Lessee, at its own cost and expense, may furnish other additions, modifications and improvements (including, without limitation, any special devices, assemblies or racks at any time attached or affixed to any Unit, the cost of which is not included in the Purchase Price of such Unit and which are not required for the operation or use of such Unit by the United States Department of Transportation, the Interstate Commerce Commission or any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over such Unit) (collectively "Additions") to the Units as Lessee may deem desirable in the proper conduct of its business so long as such Additions shall not be inconsistent with the continuing operation of the Units, and shall not diminish the value, utility or condition of the Units below the value, utility and condition thereof immediately prior to the making of such Additions, assuming the Units were then in the condition required to be maintained by the terms of this Lease.

Title to all Parts (as hereinbelow defined) incorporated in or installed as part of the Units shall without further act vest in Trustee and be subject to a valid first lien and prior perfected security interest under the CSA in the following cases: (i) such Part is in replacement of or in substitution for, and not in addition to, any Part originally incorporated in or installed as part of a Unit at the time of the acceptance thereof hereunder or any Part in

replacement of, or in substitution for, any such original Part; (ii) such Part is required to be incorporated in or installed as part of the Units pursuant to the provisions of § 7.1 hereof or the terms of the first sentence of this § 9.2; or (iii) such Part cannot be readily removed from the Unit to which it relates without material damage thereto and without diminishing or impairing the value or utility which such Unit shall have had at such time had such alteration or addition not occurred. In all other cases, if no Event of Default, or event which with notice or lapse of time or both would constitute an Event of Default, shall have occurred and be continuing, title to Parts incorporated in or installed as parts of the Units as a result of such alterations or additions shall vest in Lessee and may be removed by Lessee at any time during the term of this Lease and prior to the renewal thereof and prior to the return of the Units to Trustee pursuant to § 14 hereof. The term "Part" for the purposes of this paragraph shall be defined to include any appliance, part, instrument, accessory, furnishing or other equipment of any nature which may from time to time be incorporated in or installed as part of any Unit.

9.3. Indemnification. Lessee agrees to indemnify, protect and hold harmless Trustee (in both its individual and fiduciary capacities), Owner and Agent from and against all losses, damages, injuries, liabilities, claims (including, without limitation, claims for strict liability in tort) and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of or the occurrence of a default, an event of default or an Event of Default under the CSA, the Participation Agreement, this Lease, or any sublease entered into pursuant to § 12 hereunder, the ownership of any Unit, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit 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, except as otherwise provided in § 14 of this Lease, or the transfer of title to the Equipment by Agent pursuant to any provision of the CSA. The amount Lessee shall be required to pay with respect to any of its obligations under this paragraph shall include a payment to the indemnified party sufficient to restore such party to the same position, after considering the effect of such payment on its United States Federal income taxes and state and city income taxes or franchise taxes based on net income, that the indemnified party would have been in had the liability or expense indemnified against not been incurred.

Lessee further agrees to indemnify, protect and hold harmless Agent and Builder as third party beneficiaries hereof from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against Agent or Builder because of the use in or about the construction or operation of any of the Units of any article of material specified by Lessee and not manufactured by Builder or of any design, system, process, formula or combination specified by Lessee and not developed or purported to be developed by Builder which infringes or is claimed to infringe on any patent or other right. Lessee will give notice to Builder of any claim known to Lessee from which liability may be charged against Builder under the CSA.

Lessee shall not be released from its obligations hereunder in the event of any damage to or the destruction or loss of any or all of the Units.

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

The indemnities contained in this § 9.3 shall survive the expiration or termination of this Lease and return of the Units as provided in § 14 hereof with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination and are expressly made for the benefit of, and shall be enforceable by, any indemnified party. None of the indemnities in this § 9.3 shall be deemed to create any rights of subrogation in any insurer or third party against Lessee therefor, from or under any indemnified party, whether because of any claim paid or defense provided for the benefit thereof or otherwise. The foregoing indemnities by Lessee shall not constitute a guarantee by Lessee of the payment of any installments of principal or interest payable under the CSA or a guarantee of the residual value of any Unit.

§ 10. DEFAULT

10.1. Events of Default; Remedies. If, during the continuance of this Lease or any extension or renewal hereof, one or more of the following events (each such event being

herein sometimes called an "Event of Default") shall occur:

(A) default shall be made in payment of any amount provided for in § 3, § 6, § 7, § 13 or § 16 of this Lease and such default shall continue for five days, or default shall be made in payment of any other amount provided for in this Lease and such default shall continue for 10 days after written notice from Trustee or Agent to Lessee specifying the default and demanding that the same be remedied; or

(B) Lessee shall make or permit any unauthorized assignment or transfer of this Lease, or any interest herein, or of the right to possession of the Units, or any thereof; or

(C) default shall be made in the observance or performance of any other of the covenants, conditions and agreements on the part of Lessee contained herein or in the Participation Agreement, and such default shall continue for 25 days after written notice from Trustee or Agent to Lessee specifying the default and demanding that the same be remedied; or

(D) a petition for reorganization under Title 11 of the United States Code, as now constituted or as may hereafter be amended, shall be filed by or against 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 Lessee under this Lease and the Consent (as defined in the CSA) shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such trustee or trustees, within 60 days after such petition shall have been filed and otherwise in accordance with the provisions of 11 U.S.C. § 1168, or any successor provision, as the same may hereafter be amended; or

(E) any other proceedings shall be commenced by or against Lessee for any relief which includes, or might result in, any modification of the obligations of Lessee hereunder, under any bankruptcy or insolvency laws, or

laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustments of the obligations of Lessee hereunder or under the Consent), 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 Lessee under this Lease and the Consent shall not have been and shall not continue to have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for Lessee or for the property of Lessee in connection with any such proceedings in such manner that such obligations shall have the same status as expenses of administration and obligations incurred by such a trustee or trustees or receiver or receivers, within 60 days after such proceedings shall have been commenced; or

(F) any representation or warranty made by Lessee herein or in the Participation Agreement or in any certificate or statement furnished to Trustee or Owner pursuant to or in connection with any such agreement proves untrue in any material respect as of the date of issuance or making thereof, except for warranties or representations made to Owner in § 16 hereof provided that the indemnity payments required thereunder have been made by Lessee; or

(G) Lessee shall fail to maintain the insurance required by § 7.7 hereof and such default shall continue for 15 days after written notice from Trustee or Agent to Lessee specifying the default and demanding the same be remedied;

then, in any such case, Trustee, at its option, may:

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

(b) by notice in writing to Lessee terminate this Lease, whereupon all rights of Lessee to the use of the Units shall absolutely cease and terminate as though this Lease had never been made, but Lessee

shall remain liable as herein provided; and thereupon Trustee may by its agents enter upon the premises of Lessee or other premises where any of the Units may be and take possession of all or any of such Units and thenceforth hold, possess, sell, operate, lease to others and enjoy the same free from any right of Lessee, or its successors or assigns, to use the Units for any purposes whatever and without any duty to account to Lessee for such action or inaction or for any proceeds arising therefrom; but Trustee shall, nevertheless, have a right to recover from Lessee any and all 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 the total number of days in such full rental period) and also to recover forthwith from Lessee as liquidated damages for loss of the bargain and not as a penalty, whichever of the following amounts Trustee, in its sole discretion, shall specify: (x) a sum with respect to each Unit which represents the excess of (1) the present value, at the time of such termination, of the entire unpaid balance of all rentals for such Unit which would otherwise have accrued hereunder from the date of such termination to the end of the term of this Lease as to such Unit over (2) the then present value of the rentals which Trustee reasonably estimates to be obtainable for the Unit during such period, such present value to be computed in each case on the basis of an 8% per annum discount, compounded semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated, together with any damages and expenses, including reasonable attorneys' fees, in addition thereto which Trustee shall have sustained by reason of the breach of any covenant, representation or warranty of this Lease other than for the payment of the rental; or (y) an amount equal to the excess, if any, of the Casualty Value as of the rental payment date on or next preceding the date of termination over the amount Trustee reasonably estimates to be the sales value (after deduction of all estimated expenses of such sale) of such Unit at such time; provided, however, that in the event Trustee shall, in good faith, have sold or leased any Unit, Trustee, in lieu of collecting any amounts payable to Trustee by Lessee pursuant to the

preceding clauses (x) and (y) of this part (b) with respect to such Unit, may, if it shall so elect, demand that Lessee pay Trustee and Lessee shall pay to Trustee on the date of such sale or leasing, as the case may be, as liquidated damages for loss of a bargain and not as a penalty (i) in the case of such a sale an amount equal to the excess, if any, of the Casualty Value for such Unit, as of the rental payment date on or next preceding the date of termination, over the net proceeds of such sale, and (ii) in the case of such a leasing, an amount equal to the excess, if any, of the present value of all rental for such Unit which would otherwise have accrued hereunder from the date of termination to the end of the term of this Lease as to such Unit over the sum of (I) the then present value of all rental for such Unit required under such new lease plus (II) the then present value of the rental (if any) which Trustee reasonably estimates to be obtainable for the Unit during the period commencing on the termination of such new lease and ending on the date the term of this Lease would have terminated if it had not been terminated early due to default, each such present value to be computed in each case on the basis of an 8% per annum discount, compounded, in the case of rental which is estimated under clause (II) of this sentence, semiannually from the respective dates upon which rentals would have been payable hereunder had this Lease not been terminated and, in the case of rental under such new lease, periodically from the respective dates upon which such rental shall be payable thereunder.

In addition, Lessee shall be liable, except as otherwise provided above, for any and all unpaid amounts due hereunder before, during or after the exercise of any of the foregoing remedies and for all reasonable attorneys' fees and other costs and expenses incurred by reason of the occurrence of any Event of Default or the exercise of Trustee's remedies with respect thereto, including all costs and expenses incurred in connection with the return of any Unit.

10.2. Remedies Not Exclusive; Waiver. The remedies in this Lease provided in favor of Trustee shall not be deemed exclusive, but shall be cumulative and may be exercised concurrently or consecutively, and shall be in addition to all other remedies in its favor existing at law or in equity. 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 not, at the time in question, prohibited by law. Lessee hereby waives any and all existing or future claims to any offset against the rental payments due hereunder, and agrees to make such payments regardless of any offset or claim which may be asserted by Lessee or on its behalf.

10.3. Failure To Exercise Rights Is Not Waiver. The failure of Trustee 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.

10.4. Notice of Event of Default. Lessee shall furnish Lessor and Agent, promptly upon any responsible officer becoming aware of any condition which constituted or constitutes an Event of Default under this Lease or which, after notice or lapse of time, or both, would constitute such an Event of Default, written notice specifying such condition and the nature and status thereof. For the purposes of this § 10.4, a "responsible officer" shall mean, with respect to the subject matter of any covenant, agreement or obligation of Lessee in this Lease contained, any corporate officer of Lessee who, in the normal performance of his operational responsibilities, would have knowledge of such matter and the requirements of this Lease with respect thereto.

§ 11. RETURN OF UNITS UPON DEFAULT

11.1. Return of Units. If this Lease shall terminate pursuant to § 10 hereof or pursuant to Article 15 of the CSA, Trustee may, 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 Trustee, take or cause to be taken by its agent or agents, immediate possession of each of the Units, or one or more of the Units and may remove the same from possession and use of Lessee or any other person and for such purpose may enter upon the premises of Lessee or any other premises where the Units may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of Lessee, subject to all mandatory requirements of due process of law.

If this Lease shall terminate pursuant to § 10 hereof or pursuant to Article 15 of the CSA, Lessee shall forthwith deliver possession of the Units to Trustee. Each

Unit so delivered shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear and modifications, if any, permitted by this Lease excepted and (ii) meet standards then in effect under the interchange rules of the Association of American Railroads, if applicable, or such comparable standards as may then be in effect. For the purpose of delivering possession of any Unit or Units to Trustee as above required, Lessee shall at its own cost, expense and risk:

(a) forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any Unit or Units have been interchanged or which may have possession thereof to return the Unit or Units) and at the usual speed place such Units upon such storage tracks of Lessee or any of its affiliates as Trustee reasonably may designate;

(b) permit Trustee to store such Units on such tracks at the risk of Lessee without charge for insurance, rent or storage until such Units have been sold, leased or otherwise disposed of by Trustee; and

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

The assembling, delivery, storage, insurance and transporting of the Units as hereinbefore provided shall be at the expense and risk of Lessee and are of the essence of this Lease, and upon application to any court of equity having jurisdiction in the premises Trustee shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. During any storage period, Lessee will, at its own cost and expense, maintain and keep the Equipment in good order and repair and will permit Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of any such Unit, to inspect the same. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Trustee and, if received by Lessee, shall be promptly turned over to Trustee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, Lessee

shall, in addition, pay to Trustee for each day after such termination an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by Trustee on such Unit for each such day; such payment shall not affect the obligation of Lessee to redeliver the Equipment pursuant to the first sentence of this paragraph.

11.2. Trustee Appointed Agent of Lessee. Without in any way limiting the obligation of Lessee under the foregoing provisions of this § 11, Lessee hereby irrevocably appoints Trustee as the agent and attorney of Lessee, with full power and authority, at any time while Lessee is obligated to deliver possession of any Unit to Trustee, to demand and take possession of such Unit in the name and on behalf of Lessee from whomsoever shall be in possession of such Unit at the time.

§ 12. ASSIGNMENT; POSSESSION AND USE

This Lease shall be assignable in whole or in part by Trustee without the consent of Lessee, but Lessee shall be under no obligation to any assignee of Trustee except upon written notice of such assignment from Trustee. All the rights of Trustee hereunder (including, but not limited to, the rights under §§ 6, 7, 10 and 16 and the rights to receive the rentals payable under this Lease) shall inure to the benefit of Trustee's assigns.

So long as Lessee shall not be in default under this Lease and Lessee shall have fully complied with the provisions of the fourth paragraph of this § 12, Lessee shall be entitled to the possession and use of the Units and, without Trustee's consent, to sublease the Units to, or to permit their use by, a user incorporated in the United States of America (or any state thereof or the District of Columbia), upon lines of railroad owned or operated by Lessee or such user or by a railroad company or companies incorporated in the United States of America (or any state thereof or the District of Columbia), or over which Lessee, such user, or such railroad company or companies have trackage rights or rights for operation of their trains, and upon the lines of railroad of connecting and other carriers in the usual interchange of traffic or in through or run-through service, but only upon and subject to all the terms and conditions of this Lease and the CSA; provided, however, that Trustee's consent,

not to be unreasonably withheld, must be obtained for any sublease that is for a term or terms that aggregate more than six months in any one year; provided further, however, that Lessee shall not sublease or permit the sublease or use of any Unit outside the United States of America, except occasional use permitted in Canada as long as such use does not involve regular operation and maintenance outside the United States of America; and provided further, however, that any such sublease or use shall be consistent with the provisions of § 16 hereof. No such assignment or sublease shall relieve Lessee of its obligations hereunder which shall be and remain those of principal and not a surety.

Any such sublease may provide that the sublessee, so long as it shall not be in default under such sublease, shall be entitled to the possession of the Units included in such sublease and the use thereof; provided, however, that every such sublease shall be subject to the rights and remedies of Agent under the CSA and Trustee under this Lease in respect of the Units covered by such sublease upon the occurrence of an Event of Default thereunder or hereunder.

Lessee, at its own expense, will as soon as possible cause to be duly discharged any lien, charge, security interest or other encumbrance (except any sublease as aforesaid and other than an encumbrance resulting from claims against Trustee or Agent not related to the ownership or leasing of, or the security title of Agent to, the Units) which may at any time be imposed on or with respect to any Unit including any accession thereto or the interest of Trustee, Owner, Agent or Lessee therein; except that this covenant will not be 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; and, furthermore, Lessee shall be under no obligation to discharge any such lien, charge, security interest or encumbrance so long as it is contesting the same in good faith and by appropriate legal proceedings and the failure to discharge the same does not, in the opinions of Trustee and Agent, adversely affect the title, property or rights of Trustee hereunder or Agent under the CSA.

Nothing in this § 12 shall be deemed to restrict the right of Lessee to assign or transfer its leasehold interest under this Lease in the Units or possession of the Units to any solvent Class I railroad corporation (i) incor-

porated under the laws of any state of the United States of America or the District of Columbia and (ii) with capital and surplus aggregating at least that of Lessee immediately prior to such assignment or transfer (which shall have duly assumed the obligations of Lessee hereunder pursuant to appropriate instruments satisfactory in form and substance to Trustee, Agent and their respective counsel) into or with which Lessee shall have become merged or consolidated or which shall have acquired or leased all or substantially all the lines of railroad of Lessee; provided, however, that such assignee, lessee or transferee will not, upon the effectiveness of such merger, consolidation, lease or acquisition be in default under any provision of this Lease and that such acquisition or lease of railroad lines of Lessee shall not alter in any way Lessee's obligation to Trustee and Agent hereunder which shall be and remain those of a principal and not a surety.

§ 13. RENEWAL OPTIONS AND RIGHT OF FIRST REFUSAL

Provided that this Lease has not been earlier terminated and Lessee is not in default hereunder, Lessee may by written notice delivered to Trustee not less than six months prior to the end of the original term of this Lease elect to extend the term of this Lease in respect of all but not less than all of the Units then covered by this Lease, for a five-year period commencing on the scheduled expiration of the original term of this Lease. Such extension shall be on the same terms and conditions as are contained in this Lease, except as to the amount of rentals, which shall be at a "Fair Market Rental" (as such term is defined in this § 13) payable semiannually in arrears, and except as to applicable Casualty Values, which shall be as agreed upon between Trustee and Lessee at the time of such extension.

If Lessee shall not have elected to extend the term of this Lease at the expiration of the original or any extended term of this Lease but shall have given Trustee notice of its intention to exercise a right of first refusal with respect to the Units not less than six months prior to the expiration of the original or such extended term of this Lease and Trustee elects to sell the Units to third parties effective upon the expiration of the original or such extended term of this Lease, Trustee shall (a) as promptly as practicable after Lessee shall have given such notice, engage an appraiser appointed as provided in the fifth paragraph of this § 13 to determine the Fair Market Sale Value of the Units and, upon receipt of such determination, deliver a true copy thereof to Lessee, and (b) in a commer-

cially reasonable manner, solicit offers to buy such Units (excepting additions, modifications and improvements which may be removed by Lessee pursuant to § 9 hereof), and upon receipt thereof shall exhibit to Lessee a true copy of the most favorable bona fide offer, and Lessee shall have a right of first refusal, exercisable by written notice delivered within 15 days of the receipt of said copy, to purchase such Units at the higher of (1) the Fair Market Sale Value determined by the appraiser or (2) the sale price set forth in such offer.

Upon purchase of the Units by Lessee, Trustee shall upon request of Lessee execute and deliver to Lessee or to Lessee's assignee or nominee, a bill of sale (without representations or warranties except that such Units are free and clear of all claims, liens, security interest and other encumbrances by or in favor of any person claiming by, through or under Trustee) for such Units, and such other documents as may be required to release such Units, from the terms and scope of this Lease and to transfer title thereto to Lessee or such assignee or nominee, in such forms as may reasonably be requested by Lessee, all at Lessee's expense.

Fair Market Rental and Fair Market Sale Value shall be determined on the basis of, and shall be equal in amount to, the rental or sale value which would obtain in an arm's-length transaction between an informed and willing lessee or vendee, as the case may be (other than a lessee currently in possession), and an informed and willing lessor or vendor, as the case may be, under no compulsion to lease or sell, as the case may be, and, in such determination, costs of removal from the location of current use shall not be a deduction from such rental or sale value but there shall be excluded any rental value or sale value attributable to additions, modifications and improvements which Lessee is entitled to remove pursuant to § 9 hereof; provided, however, that Fair Market Rental shall be determined as provided in the preceding sentences on the basis of the term and other terms and conditions of the lease being considered.

If (a) after 45 days from the giving of notice by Lessee of Lessee's election to extend the term of this Lease beyond the first extended term, as provided in the first paragraph of this § 13, Trustee and Lessee are unable to agree upon a determination of Fair Market Rental, or (b) Trustee shall be required to engage an appraiser to determine Fair Market Sale Value as provided in the second paragraph of this § 13, such Rental or Sale Value, as the

case may be, shall be determined in accordance with the foregoing definitions by the following procedure: If either party to such determination shall have given written notice to the other requesting determination of Fair Market Rental by this appraisal procedure, or Trustee shall be required to engage an appraiser as aforesaid, the parties shall consult for the purpose of appointing a qualified independent appraiser by mutual agreement. If no such appraiser is so appointed within 20 business days after such notice is given, each party shall appoint an independent appraiser within 25 business days after such notice is given, and the two appraisers so appointed shall within 35 business days after such notice is given appoint a third independent appraiser. If no such third appraiser is appointed within 35 business days after such notice is given, either party may apply, to make such appointment, to the American Arbitration Association, and both parties shall be bound by any appointment so made. Any appraiser or appraisers appointed pursuant to the foregoing procedure shall be instructed to determine the Fair Market Rental or the Fair Market Sale Value, as the case may be, of the Units subject to the proposed extended term within 90 days after his or their appointment. If the parties shall have appointed a single appraiser or if either party shall have failed to appoint an appraiser, the determination of the single appraiser appointed shall be final. If three appraisers shall be appointed, the determination of the appraiser which differs most from the other two appraisers shall be excluded, the remaining two determinations shall be averaged and such latter average shall be final and binding upon the parties hereto. The appraisal proceedings shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association as in effect on the date hereof, except as modified hereby. The provision for this appraisal procedure shall be the exclusive means of determining Fair Market Rental and Fair Market Sale Value and shall be in lieu of any judicial or other procedure for the determination thereof, and each party hereto hereby consents and agrees not to assert any judicial or other procedures. The expenses of the appraisal procedure shall be borne equally by Lessee and Trustee.

§ 14. RETURN OF UNITS UPON EXPIRATION OF LEASE TERM

As soon as practicable on or after the expiration of the original term or any extended term of this Lease with respect to any Unit which Lessee does not purchase or

re-lease pursuant to § 13, Lessee will, at its own cost and expense, at the request of Trustee, deliver possession of such Unit to Trustee upon such storage tracks of Lessee as Lessee may reasonably designate, in such city on the lines of Lessee as Trustee may reasonably designate, or in the absence of Trustee's designation, in such city on the lines of Lessee as Lessee may designate, and permit Trustee 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 Lessee, or to any connecting carrier for shipment, all as directed by Trustee, the movement and storage of such Units to be at the expense and risk of Lessee (including the insurance required by § 7.7 hereof). During any such storage period Lessee will maintain each Unit as required by § 7.1(a) hereof and will permit Trustee or any person designated by it, including the authorized representative or representatives of any prospective purchaser, lessee or user of such Unit, to inspect the same; provided, however, that Lessee shall not be liable, except in the case of negligence of Lessee or of its employees or agents, for any injury to, or the death of, any person exercising, either on behalf of Trustee or any prospective purchaser, lessee or user, the rights of inspection granted under this sentence. Each Unit returned to Trustee pursuant to this § 14 shall (i) be in the same operating order, repair and condition as when originally delivered to Lessee, ordinary wear and tear excepted, and (ii) except for additions, modifications and improvements which Lessee is entitled to remove under the provisions of § 9 of this Lease, meet all operating standards then in effect under the applicable rules of any governmental agency or other organization with jurisdiction. The assembling, 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, Trustee shall be entitled to a decree against Lessee requiring specific performance of the covenants of Lessee so to assemble, deliver, store and transport the Units. All amounts earned in respect of the Units after the date of termination of this Lease shall belong to Trustee and, if received by Lessee, shall be promptly turned over to Trustee. In the event any Unit is not assembled, delivered and stored, as hereinabove provided, within 60 days after such termination, Lessee shall, in addition, pay to Trustee for each day thereafter an amount equal to the amount, if any, by which the product of (i) a fraction the numerator of which is the Penalty Rate (as defined in § 17 hereof) and the denominator of which is 360, and (ii) the Purchase Price of such Unit for each such day exceeds the actual earnings received by Trustee on such Unit for each such day.

§ 15. RECORDING

Lessee, at its own expense, will cause this Lease, the CSA, the Lease Assignment, the CSA Assignment and any other assignment hereof or thereof to be filed with the Interstate Commerce Commission pursuant to 49 U.S.C. § 11303 and deposited with the Registrar General of Canada (and notice of such deposit to be given forthwith in The Canada Gazette) pursuant to Section 86 of the Railway Act of Canada. Lessee 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 rerecord whenever required) any and all further instruments required by law or reasonably requested by Trustee or Agent for the purpose of proper protection, to their satisfaction, of Agent's and Trustee's respective interests in the Units, or for the purpose of carrying out the intention of this Lease, the CSA, the Lease Assignment and the CSA Assignment; and Lessee will promptly furnish to Agent and Trustee evidence of all such filing, registering, depositing, recording and other acts which may be required under this § 15, and an opinion or opinions of counsel for Lessee with respect thereto satisfactory to Agent and Trustee. This Lease, the CSA, the Lease Assignment and the CSA Assignment shall be filed with the Interstate Commerce Commission and deposited with the Registrar General of Canada and provision shall be made for publication of notice of such deposit in The Canada Gazette prior to the delivery and acceptance hereunder of any Unit.

§ 16. INCOME TAX INDEMNIFICATION

16.1. Tax Assumptions. It is the intent of the parties to this Lease that it will be recognized as a lease for all Federal, state, city and local income taxes or franchise taxes imposed on or measured by net income, and that this Lease does not convey to Lessee any right, title or interest in the Units except as lessee. In accordance with that intent, this Lease and the CSA have been entered into on the assumptions (the "Tax Assumptions") that for United States income tax purposes (and to the extent applicable for state, city and local tax purposes):

(A) Owner, as the beneficial owner of the Units, will be entitled to such deductions, credits and other benefits as are provided by the Internal Revenue Code of 1954, as amended to the date hereof (the "Code"),

to an owner of property, including, without limitation:

(1) the maximum depreciation deduction with respect to the Units authorized under Section 167 of the Code (the "ADR Deduction"), (a) utilizing a 12-year depreciable life, which is the lower limit listed in Revenue Procedure 77-10, 1977-1 CB 548 for property in Asset Guideline Class No. 00.25, as in effect at the time Trustee becomes the owner of each Unit, in accordance with the Class Life Asset Depreciation Range System described in Section 167(m) of the Code and the Treasury Regulations promulgated thereunder as in effect on the date hereof, (b) employing initially the 200% declining balance method of depreciation with a change, not requiring the consent of the Commissioner of Internal Revenue, to the sum of the years-digits method of depreciation when most beneficial to Owner, as permitted by the Code and regulations at the time Trustee becomes the owner of each Unit, (c) including in the basis of the Units the entire Purchase Price thereof and all other items properly includible under Section 1012 of the Code (the "Basis"), and (d) depreciating to a net salvage value of zero after taking into account the reduction of salvage value permitted by Section 167(f) of the Code;

(2) deductions with respect to interest payable under the CSA pursuant to Section 163 of the Code (the "Interest Deduction"); and

(3) the 10% investment credit with respect to 100% of the Basis of the Units (the "Investment Credit"), pursuant to Section 38 and related sections of the Code; and

(B) each Unit of Equipment will have a fair market value at the end of the original term of this Lease (such fair market value being determined without including in such value any increase or decrease for inflation or deflation during such original lease term and determined after subtracting from such value the cost, if any, for removal and redelivery of possession to Trustee at the end of such term) equal to at least 20% of the original cost for such Unit, and each Unit is estimated to have a remaining useful life at the

end of the original term of this Lease equal to at least four years.

16.2. Basic Indemnity. (a) Lessee represents, warrants and indemnifies that: (i) at the time Trustee becomes the owner of each Unit, such Unit will constitute property the entire Basis of which qualifies for the 10% Investment Credit under Sections 38, 46, 48 and 50 of the Code; (ii) at the time Trustee becomes the owner of each Unit, such Unit will constitute "new section 38 property", within the meaning of Sections 46 and 48 of the Code, of Owner, and will not have been used by any person so as to preclude "the original use of such property" within the meaning of Sections 48(b) and 167(c)(2) of the Code from commencing with Owner; (iii) at the time Trustee becomes the owner of each unit, Owner will be entitled to and such Unit will qualify for the ADR Deduction using the Tax Assumption as to useful life and methods as set forth in 1(a) and 1(b) of § 16.1 hereof; (iv) Lessee will not at any time during the term of this Lease use or fail to use or permit the use of any Unit in such a way as to disqualify it as "section 38 property" within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction; (v) Lessee will maintain sufficient records to verify such use, which records will be furnished to Trustee within 30 days after receipt of a written demand therefor; and (vi) Owner will be entitled to the Interest Deduction.

(b) Lessee agrees that neither it nor any corporation controlled by it, in control of it or under common control with it, directly or indirectly, will at any time take any action (other than any action required by the terms of this Lease) or file any tax returns or other documents inconsistent with the foregoing or which would increase the amount of rentals required to be taken into income by Owner over the amount specified to be payable under this Lease on the dates due hereunder except as specifically provided in this Lease, and that each of such corporations will file such returns, take such action, and execute such documents as may be reasonable and necessary to facilitate accomplishment of the intent thereof. Lessee agrees to keep and make available for inspection and copying upon demand by Trustee or Owner such records as will enable Owner to determine the extent to which they are entitled to the full benefit of the ADR Deduction, the Interest Deduction and the Investment Credit with respect to the Units. For purposes of this § 16.2(b) it is assumed that Owner shall claim in its tax returns all the deductions, credits and benefits contemplated by the Tax Assumptions.

16.3. Effect of Indemnities. (a) Lessee's indemnification of Owner under § 16.2 hereof will place Owner in the same position with respect to the transaction as if the condition indemnified against had not existed. If (except as a result of the occurrence of any Excluded Event set forth below) Owner shall suffer a disallowance of or shall be required to recapture or shall not have or shall lose the right to claim (any such event being hereinafter called a "Loss"), of all or any portion of the Investment Credit, the ADR Deduction or the Interest Deduction (a "Benefit") with respect to all or part of any Unit due to:

(i) the inaccuracy of any statement in any letter or document furnished to Trustee or Owner by Lessee (or any officer, agent or employee thereof);

(ii) the noncompliance, breach, or misrepresentation by Lessee with or of any provision of § 16.2 hereof;

(iii) the use of any Unit by Lessee in such a way as to disqualify it as section 38 property within the meaning of Section 48(a) of the Code or as property eligible for the ADR Deduction; or

(iv) any actions or omissions by Lessee, except any actions or omissions permitted by the terms of this Lease;

then in any such case of Loss of Benefit, subject to the provisions of § 16.3(d) hereof dealing with contesting a disallowance or recapture of a Tax Benefit, the rental rate applicable to such Unit set forth in § 3 of this Lease shall, on and after the next succeeding rental date after payment of the tax attributable to any Loss of Benefit under the provisions of this paragraph, be increased by such amount for such Unit as, in the reasonable opinion of Owner, after due consultation with Lessee, will preserve for Owner the after-tax rate of return and after-tax cash flow (the "Net Return") that would have been realized by Owner if such Loss had not occurred in respect of such Unit under this Lease. Lessee shall forthwith pay to Owner the amount of any interest and penalty which may be assessed by the United States (or where applicable by any state or local taxing jurisdiction) against Owner attributable to the Loss.

(b) Notwithstanding the provisions of § 16.3(a) hereof, there shall be no increase made in rentals nor any payment be required to be made by Lessee if Owner shall have suffered such Loss with respect to all or part of such Unit as a result of the occurrence of any of the following events ("Excluded Events"):

(i) a Casualty Occurrence with respect to such Unit, if Lessee shall have paid to Trustee the amounts stipulated under § 7 hereof; or

(ii) a voluntary transfer or other voluntary disposition by Trustee or Owner or any transfer or disposition by Trustee or Owner resulting from bankruptcy or other proceedings for relief of debtors in which Owner is the debtor, whether voluntary or involuntary, of any interest in such Unit or the voluntary reduction by Owner of its interest in the rentals from such Unit under this Lease (other than pursuant to the assignment of this Lease to Agent), unless, in each case, an Event of Default shall have occurred and be continuing; or

(iii) the failure of Owner to claim in a timely and proper manner (including all appropriate elections) in its Federal income tax return the Investment Credit, the ADR Deduction or the Interest Deduction; or

(iv) the failure of Owner to have sufficient liability for Federal income tax against which to credit such Investment Credit or sufficient income to benefit from the ADR Deduction or the Interest Deduction, as applicable; or

(v) any amendments to the Code, IRS Regulations and tax rules enacted or promulgated and effective after the date on which Trustee becomes the owner of each Unit; or

(vi) the tax status of the trust purported to be created by the Trust Agreement; or

(vii) any participation in the residual value of any Unit at the expiration of the original term of this Lease by any party other than Owner; or

(viii) any determination that the net salvage value of any Unit is greater than 0%.

(c) Trustee or Owner shall promptly, upon its knowledge thereof, give written notice to Lessee of any claim or proceeding in respect of which Lessee would be required to make indemnification payments under the provisions of this § 16. Owner agrees that if, in the opinion of independent tax counsel selected by Owner and approved by Lessee, such approval not to be unreasonably withheld ("Counsel"), a reasonable basis to contest the disallowance or recapture of all or a portion of the tax Benefits described above with respect to any Unit exists in respect of which Lessee would be required to make indemnification payments under the provisions of this § 16 to Owner pursuant hereto, Owner shall, upon written request and at the expense of Lessee, take all such legal or other appropriate action deemed reasonable by Counsel in order to contest such claim, and if Owner fails to contest, Lessee will not be required to indemnify Owner for the Loss of tax Benefits as set forth in § 16.3(a) hereof; provided, however, that Owner shall not be obligated to take any such legal or other appropriate action unless Lessee shall first have indemnified Owner for all expenses which may be entailed therein. If within 30 days after notice from Trustee or Owner Lessee does not request that Owner contest the disallowance or recapture of the tax Benefits or in the opinion of Counsel no reasonable basis to contest such matter exists, then Lessee will have no further right of contest.

(d) In the event Lessee requests that Owner contest the disallowance or recapture of the tax Benefits and in the opinion of Counsel a reasonable basis to contest such matter exists, then Owner shall either take such action to contest the disallowance or recapture prior to making payment of any tax and interest and/or penalty attributable to the disallowance or recapture with respect to Owner of all or any portion of the tax Benefits with respect to any Unit or shall make such tax payment (the "Tax Payment") and thereafter seek a refund. If Owner contests prior to making such Tax Payment, such indemnification payable hereunder need not be paid by Lessee while such action is pending. In such case, if the Final Determination (as hereinafter defined) shall be adverse to Owner, the indemnification payable hereunder shall be computed by Owner as of the date of such Final Determination and Lessee shall commence payment of indemnities on the date and in the manner and to the extent provided in § 16.3(a) hereof, and on or before such payment date, Lessee shall pay to Owner as an additional payment hereunder an amount equal to all interest and penalty

paid by Owner in respect of such Final Determination together with an amount sufficient to maintain Owner's Net Return. If Owner elects to make such Tax Payment prior to contesting the matter, such indemnification payable hereunder is to commence immediately in the manner and to the extent provided in § 16.3(a) hereof, and such payments by Lessee due on and after the date of such Tax Payment shall be calculated on a basis so as to maintain Owner's Net Return, and on or before such Tax Payment is due, Lessee shall pay to Owner as an additional payment hereunder an amount equal to all interest and penalty paid by Owner included in such Tax Payment. If Owner seeks a refund after making such Tax Payment and the Final Determination shall be in favor of Owner, Owner shall forthwith upon receipt of refund of amounts previously paid, pay to Lessee an amount consisting of the aggregate of the following: (1) the amount of the increase in rental payments which, under the Final Determination, would not have been payable by Lessee to Owner pursuant to § 16.3(a) hereof; and (2) the amount of interest and/or penalty paid or repaid to Owner by the taxing jurisdiction. In addition, the rentals for the Units shall, beginning with the next rental payment due, and after receipt by Owner of such refund, be decreased to such amount or amounts as shall, in the reasonable opinion of Owner, cause Owner's Net Return to equal the net return that would have been realized by Owner if additional income taxes of Owner in the amount refunded had not been paid; provided, however, that such subsequent rentals shall not be reduced below the amounts required to satisfy the obligations of Trustee under the CSA. Lessee agrees to pay to Owner on demand any reasonable expense incurred by Trustee in connection with such contest. For purposes of this § 16 "Final Determination" is defined as a final decision or opinion of a court of competent jurisdiction which, in the opinion of Counsel and after taking into consideration the liabilities created thereby, presents no reasonable basis on which to appeal.

(e) Lessee's and Owner's agreements and obligations to pay any sums which may become payable pursuant to this § 16 shall survive the expiration or other termination of this Lease. For purposes of this § 16, the term "Owner" shall include any affiliated group, within the meaning of Section 1504 of the Code, of which Owner is a member if consolidated returns are filed for such affiliated group for Federal income tax purposes.

(f) In the event the rental rates shall be increased (or decreased) as hereinbefore provided, the Casualty Values set forth in § 7 hereof and the damages and amounts set forth in subparagraph (b) of § 10.1 hereof shall be adjusted accordingly; provided, however, that such Casualty Values shall not be reduced below the amounts required to satisfy the obligations of Trustee under the CSA.

(g) If any amendment to the Code, IRS Regulations or tax rules is enacted or promulgated and made effective with respect to any Unit prior to the time Trustee becomes the owner of such Unit, and such amendment causes a change in the tax benefits contemplated by Owner, then the rental rate specified in § 3 of this Lease (and the Casualty Value percentages set forth in Schedule 2 hereto) shall be increased or decreased as necessary so as to preserve each Owner's Net Return at the same level as if such tax benefits had not been changed; provided, however, such rental rate (and Casualty Value percentages) shall not be reduced below the amounts required to satisfy the obligations of Trustee under the CSA.

16.4. Alterations, Modifications and Improvements. (a) In the event and to the extent that Owner is required to include in its gross income for Federal income tax purposes the value of any addition, modification or improvement to the Units made by Lessee, under and pursuant to the terms of this Lease or otherwise (all such additions, modifications or improvements described in this sentence being hereinafter called "Alterations"), Lessee shall pay to Owner on each of the dates provided in this Lease for payment of the installments of rental hereunder commencing with the first such date following the date on which Lessee is required to furnish written notice of such inclusion to Owner pursuant to the following paragraph such additional rentals which, after deduction of all taxes required to be paid by Owner on the receipt thereof under the laws of the United States of America or any political subdivision thereof and after taking into account any present or future tax benefits that Owner reasonably anticipates it will derive from its additional investment in the Equipment (including, without limitation, any available current deduction, current and future depreciation deductions and investment tax credit), when taken together with the amount of any rental installments due on such dates under this Lease (but with appropriate adjustment on any such date for any such rental installment which for any reason shall not in fact be paid by Lessee), will, in the

reasonable opinion of Owner, cause Owner's Net Return to equal the Net Return that would have been realized by Owner if the value of any such Alteration had not been includible in Owner's gross income. The Casualty Values payable with respect to the Units shall be adjusted in amounts calculated in a similar such manner by Owner.

(b) Lessee agrees that, within 30 days after the close of any calendar year (or in the event Trustee or Owner gives Lessee written notice that the taxable year of the entity created by the Trust Agreement closes on a date specified therein other than December 31, within 30 days after said date) in which Lessee has made Alterations which are includible in the gross income of Owner for Federal income tax purposes under this § 16.4, Lessee will give written notice thereof to Owner describing such Alterations in reasonable detail and specifying the value thereof with respect to the Units.

§ 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 Lessee promptly to pay, to the extent legally enforceable, interest at a rate per annum (the "Penalty Rate") equal to the higher of (i) 12% or (ii) 3% above the rate of The Chase Manhattan Bank, National Association, in effect from time to time for prime commercial loans of 90-day maturities to its most substantial commercial customers on 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 by either party hereto to the other shall be deemed to have been given when delivered, telexed or mailed, first class, postage prepaid, addressed as follows:

(a) if to Trustee, at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, Attention of Corporate Trust Department, with copies to Owner at its address specified in Schedule 1 hereto; and

(b) if to Lessee, at 400 West Madison Street, Chicago, Illinois 60606, Attention of Assistant Vice President-Finance;

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing. Copies of each such notice shall be given to Agent at 79 South Main Street (Suite 310), Salt Lake City, Utah 84111, Attention of Corporate Trust Department.

§ 19. MISCELLANEOUS

19.1. Severability. 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.

19.2. Effect and Modification of Lease. Except for the Participation Agreement and the Trust Agreement, this Lease exclusively and completely states the rights of Trustee and Lessee with respect to the leasing of the Units and supersedes all other agreements, oral or written, with respect thereto. 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 signatories for Trustee and Lessee.

19.3. Third Party Beneficiaries. Nothing in this Lease shall be deemed to create any right in any person not a party hereto (other than Owner, Agent, Investor, Builder and the permitted successors and assigns of a party), and this instrument shall not be construed in any respect to be a contract in whole or in part for the benefit of a third party except as aforesaid.

19.4. Trustee's Right To Perform for Lessee. If Lessee fails to perform or comply with any of its agreements contained herein, Trustee may, upon notice to Lessee, itself perform or comply with such agreement, and the amount of the reasonable cost and expenses of Trustee incurred in connection with such performance or compliance, together with interest on such amount at the Penalty Rate (as defined in § 17 hereof) (or such lesser amount as may be legally enforceable)

shall be payable by Lessee upon demand. No such performance or compliance by Trustee shall be deemed a waiver of the rights and remedies of Trustee against Lessee hereunder or be deemed to cure a default by Lessee hereunder.

§ 20. EXECUTION

This Lease may be executed in several counterparts, such counterparts together constituting but one and the same instrument, but the counterpart delivered to Agent pursuant to the assignment hereof to Agent shall be deemed to be the original and all other counterparts shall be deemed duplicates thereof. Although for convenience this Lease is dated as of the date first set forth above, 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.

§ 21. LAW GOVERNING

The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

§ 22. DEFINITIONS

Whenever the term "Trustee" is used in this Lease, it shall also include Owner and any assignees of Owner and, where the context so requires (including but not limited to certain of the provisions of § 6 and § 16 hereof), shall, except for purposes of any assignment of "Trustee's" rights under this Lease, refer only to Owner or such assignees of Owner.

All rights of Trustee hereunder (including, but not limited to, its rights under §§ 6, 7, 9, 10 and 16 and the right to receive the rentals payable under this Lease) shall inure to the benefit of Owner and Owner's successors and assigns under the Trust Agreement and Trustee's assigns (including Agent).

§ 23. CONCERNING TRUSTEE

Each and all of the warranties, representations, undertakings and agreements herein made on the part of Trustee are made and intended not as personal representations, undertakings and agreements by the financial institution acting as Trustee, or for the purpose or with the intention of binding said financial institution personally, but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Lease is executed and delivered by said financial institution solely in the exercise of the powers expressly conferred upon said financial institution as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said financial institution, except for wilful misconduct or gross negligence, or against Owner under the Trust Agreement (except under the last paragraph of Section 5.01 thereof) or on account of any representation, undertaking or agreement herein of Trustee or Owner, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by Lessee and by all persons claiming by, through or under Lessee.

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

CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY,

[Corporate Seal]

by

Attest:

Senior Vice President-Finance

Assistant Secretary

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Trustee,

[Corporate Seal]

by

Attest:

Authorized Officer

Authorized Officer

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

On this day of November 1979, before me personally appeared J. M. Butler, to me personally known, who, being by me duly sworn, says that he is Senior Vice President-Finance of CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank, that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

_____
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 TO LEASE

Type	Builder's Specification	Builder's Plant	Quantity	Estimated Base Price	Estimated Total Base Price	Road Numbers (Inclusive)	Estimated Time of Delivery
GP-38-2 locomotives	8090	McCook, Illinois	12	$520,470	$6,245,640	CNW 4600 through CNW 4611	November 1979

Place of delivery: Freight yard of Lessee at Proviso, Illinois

Name and Address of Owner:

Mercantile Trust Company, N.A.
Mercantile Tower
721 Locust
St. Louis, Missouri 63101

Attention of David T. Stoecker.

SCHEDULE 2 TO LEASE

CASUALTY VALUES

Casualty Payment Dates Date	No.	Percentage of Purchase Price*
(Acceptance to Lease Commencement)	0	102.582257
1/1980	1	102.582257
7/1980	2	103.844886
1/1981	3	103.748311
7/1981	4	103.638575
1/1982	5	103.502314
7/1982	6	103.144884
1/1983	7	96.033141
7/1983	8	95.177142
1/1984	9	94.048419
7/1984	10	92.705365
1/1985	11	84.627009
7/1985	12	82.827525
1/1986	13	80.812144
7/1986	14	78.655019
1/1987	15	69.894794
7/1987	16	67.485318
1/1988	17	64.938803
7/1988	18	62.247455
1/1989	19	59.403036
7/1989	20	56.396841
1/1990	21	53.219669
7/1990	22	49.915390
1/1991	23	46.536047
7/1991	24	43.115105
1/1992	25	39.676258
7/1992	26	36.241404
1/1993	27	32.845796
7/1993	28	29.481004
1/1994	29	26.212727
7/1994	30	23.267468
1/1995	31	20.000000

* As defined in Paragraph 4.1 of the CSA.

ECONOMIC CASUALTY VALUE SCHEDULE

Payment Date	Percentage of Purchase Price*
7/1994	29.267468
1/1995	26.000000

* As defined in Paragraph 4.1 of the CSA.

[CS&M Ref. 5237-010]

ANNEX D
to
Conditional Sale Agreement (B)

ASSIGNMENT OF LEASE AND AGREEMENT dated as of October 15, 1979 (this "Assignment"), between FIRST SECURITY STATE BANK, a Utah banking corporation ("Trustee"), acting solely in its capacity as Trustee under a Trust Agreement dated as of the date hereof (the "Trust Agreement") with MERCANTILE TRUST COMPANY, N.A. ("Owner"), and FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, a national banking association, as Agent ("Agent") under a Participation Agreement dated as of the date hereof (the "Participation Agreement").

WHEREAS Trustee is entering into a Conditional Sale Agreement dated as of the date hereof (the "CSA") with GENERAL MOTORS CORPORATION (Electro-Motive Division) ("Builder"), providing for the sale to Trustee by Builder of such units of railroad equipment (the "Units") described in Annex B thereto as are delivered to and accepted by the Trustee thereunder;

WHEREAS Trustee and CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY ("Lessee") have entered into a Lease of Railroad Equipment dated as of the date hereof (the "Lease") providing for the leasing by Trustee to Lessee of the Units; and

WHEREAS, in order to provide security for the obligations of Trustee under the CSA and as an inducement to Agent to invest in the CSA Indebtedness (as that term is defined in Paragraph 4.3(b) of the CSA), Trustee agrees to assign for security purposes its rights in, to and under the Lease to Agent;

NOW, THEREFORE, in consideration of the premises and of the payments to be made and the covenants hereinafter mentioned to be kept and performed, the parties hereto agree as follows:

1. Trustee hereby assigns, transfers and sets over unto Agent, as collateral security for the payment and performance of the obligations of Trustee under the CSA, all Trustee's right, title and interest, powers, privileges and other benefits under the Lease (including those inuring to

the benefit of Owner), including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by Trustee from Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the "Payments"), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease, and to do any and all other things whatsoever which Trustee is or may become entitled to do under the Lease; provided, however, that, so long as no Event of Default or event which with lapse of time and/or giving of notice provided for in the Lease would constitute an Event of Default under the Lease shall have occurred and be continuing, and without in any way limiting the right of Agent to exercise the rights assigned to it hereunder on its own without the consent of Trustee, Trustee shall be entitled to exercise any right of Trustee under the Lease if the holders of interests totaling more than 50% of the aggregate CSA Indebtedness then outstanding shall have consented to, and Agent shall have been notified by Trustee or Owner of, such exercise; and provided further, however, that any provision of this Assignment to the contrary notwithstanding, from and after January 15, 1988, so long as this Assignment shall remain in effect, Trustee shall have the right, in addition to such right assigned to Agent hereby, to exercise the rights of Trustee under § 19.4 of the Lease to cause the Equipment to be maintained and/or insured as required by the applicable provisions of the Lease. In furtherance of the foregoing assignment, Trustee hereby irrevocably authorizes and empowers Agent in its own name, or in the name of its nominee, or in the name of Trustee or as its attorney, to ask, demand, sue for, collect and receive any and all Payments to which Trustee is or may become entitled under the Lease, and to enforce compliance by Lessee with all the terms and provisions thereof. Notwithstanding the foregoing, the Payments shall not be deemed to include, either before or after an Event of Default shall have occurred and be continuing under the Lease, payments made by Lessee to Trustee or Owner pursuant to § 16 of the Lease.

Agent agrees to accept any Payments made by Lessee for the account of Trustee pursuant to the Lease. To the extent received, Agent will apply such Payments to satisfy the obligations of Trustee under the CSA and Paragraph 9 of the Participation Agreement, and, so long as no event of default or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default thereunder, shall have occurred and be continuing, any balance shall be paid to Trustee on the same date such Payment is applied to satisfy such obligations of Trustee, by check

mailed to Trustee on such date or, upon written request of Trustee, by bank wire to Trustee at such address as may be specified to Agent in writing, and such balance shall be retained by Trustee. Agent shall promptly notify Trustee and Owner by telegraphic or telex communication at the addresses set forth in the Lease if Agent shall not receive any rental payment under § 3.1 of the Lease when due; provided, however, that the failure of Agent to so notify Trustee shall not affect the obligations of Trustee hereunder or under the CSA.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject Agent to, or transfer, or pass, or in any way affect or modify the liability of Trustee under the Lease, it being agreed that all obligations of Trustee to Lessee shall be and remain enforceable by Lessee, its successors and assigns, against, and only against, Trustee or persons other than Agent.

3. Trustee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by Trustee; without the written consent of Agent, Trustee will not anticipate the rents under the Lease or waive, excuse, condone, forgive or in any manner release or discharge Lessee thereunder of or from the obligations, covenants, conditions and agreements to be performed by Lessee, including, without limitation, the obligation to pay the rents in the manner and at the time and place specified therein or enter into any agreement amending, modifying or terminating the Lease and Trustee agrees that any amendment, modification or termination thereof without such consent shall be void.

4. Trustee does hereby constitute Agent the true and lawful attorney of Trustee, irrevocably, with full power (in the name of Trustee, or otherwise), to ask, require, demand, receive, compound and give acquittance for any and all Payments due and to become due under or arising out of the Lease to which Trustee is or may become entitled, to enforce compliance by Lessee with all the terms and provisions of the Lease, to endorse any checks or other instruments or orders in connection therewith and to file any claims or take any action or institute any proceedings which to Agent may seem to be necessary or advisable in the premises.

5. Upon the full discharge and satisfaction of all sums due from Trustee under the CSA, this Assignment and all rights herein assigned to Agent shall terminate, and all estate, right, title and interest of Agent in and to the

Lease shall revert to Trustee without further act or deed, but Agent shall execute and deliver such documents as Trustee may reasonably request in order to confirm, or make clear upon public records, such termination and/or reversion.

6. Trustee will, from time to time, execute, acknowledge and deliver any and all further instruments required by law or reasonably requested by Agent in order to confirm or further assure the interest of Agent hereunder.

7. Agent may assign all or any of the rights assigned to it hereby or arising under the Lease, including, without limitation, the right to receive any Payments due or to become due. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Agent hereunder.

8. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by 49 U.S.C. § 11303.

9. Trustee shall cause copies of all notices received in connection with the Lease and all Payments hereunder to be promptly delivered or made to Agent at its address set forth in Article 20 of the CSA, or at such other address as Agent shall designate.

10. Agent hereby agrees with Trustee that Agent will not, so long as no event of default under the CSA has occurred and is continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits which are assigned and transferred by Trustee to Agent by this Assignment to the extent they are for the sole benefit of Trustee and not required to satisfy the obligations of Trustee under the CSA, without the prior consent of Trustee.

11. Notwithstanding any other provision of this Assignment (including, but not limited to, any provision of the first paragraph of Paragraph 1 and Paragraph 3 hereof), (a) so long as there is no event of default under the CSA, and to the extent that Agent does not seek to receive and collect any Payments under the Lease in excess of the amounts required to discharge the obligations of Trustee under the CSA, the terms of this Assignment shall not limit or in any

way affect Trustee's right to receive and collect any Payments under the Lease in excess of the obligations of Trustee under the CSA or amounts payable under § 16 of the Lease, or empower Agent in any way to waive or release Lessee's obligation to pay the same, and Trustee shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts and amounts payable under § 16 of the Lease (subject to the provisions of Paragraph 1 hereof), but shall not take any action under subparagraph (b) of § 10.1 of the Lease without the written consent of Agent and (b) each and all of the warranties, representations, undertakings and agreements herein made on the part of Trustee are made and intended not as personal representations, undertakings and agreements by the financial institution acting as Trustee, or for the purpose or with the intention of binding said institution personally but are made and intended for the purpose of binding only the Trust Estate as such term is used in the Trust Agreement, and this Assignment is executed and delivered by the said institution solely in the exercise of the powers expressly conferred upon said institution as trustee under the Trust Agreement, and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said institution, except for wilful misconduct or gross negligence, or against Owners under the Trust Agreement (except under the last paragraph of Article 5 thereof) or on account of any representation, undertaking or agreement herein of Trustee or Owners, either expressed or implied, all such personal liability (except as aforesaid), if any, being expressly waived and released by Agent and by all persons claiming by, through or under Agent; provided, however, that Agent or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

12. This Assignment may be executed in any number of counterparts, all of which together shall constitute a single instrument, but the counterpart delivered to Agent shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof. It shall not be necessary that any counterpart be signed by both parties so long as each party shall sign at least one counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their

respective corporate seals to be affixed and duly attested, all as of the date first above written.

FIRST SECURITY STATE BANK, not in its individual capacity but solely as Trustee,

by

_____
Authorized Officer

[Corporate seal]

Attest:

_____
Authorized Officer

FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, as Agent,

by

_____
Authorized Officer

[Corporate Seal]

Attest:

_____
Authorized Officer

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this the day of November 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY STATE BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said bank and that said instrument was signed and sealed on behalf of said bank by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Notary Public

[Notarial Seal]

My Commission expires

STATE OF UTAH,)
) ss.:
COUNTY OF SALT LAKE,)

On this day of November 1979, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is an authorized officer of FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, that one of the seals affixed to the foregoing instrument is the seal of said national banking association and that said instrument was signed and sealed on behalf of said national banking association by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national banking association.

Notary Public

[Notarial Seal]

My Commission expires

CONSENT AND AGREEMENT

The undersigned, CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY, a Delaware corporation ("Lessee"), the lessee named in the Lease of Railroad Equipment (the "Lease") referred to in the foregoing Assignment of Lease and Agreement (the "Lease Assignment"), hereby (a) acknowledges receipt of a copy of the Lease Assignment and (b) consents to all the terms and conditions of the Lease Assignment and agrees that:

(1) it will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys (other than any payment provided for by § 16 of the Lease) provided for in the Lease (which moneys are hereinafter called the "Payments") due and to become due under the Lease or otherwise in respect of the Units (as defined in the Lease) leased thereunder, directly to FIRST SECURITY BANK OF UTAH, NATIONAL ASSOCIATION, as Agent ("Agent"), the assignee named in the Lease Assignment, at 79 South Main Street, Salt Lake City, Utah 84111, attention of Corporate Trust Department (or at such other address as may be furnished in writing to Lessee by Agent);

(2) in accordance with the provisions of the Lease Assignment, Agent shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by Lessee under the Lease as though Agent were named therein as Trustee;

(3) Agent shall not, by virtue of the Lease Assignment or this Consent and Agreement, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of Agent, be terminated or modified, nor shall any action be taken or omitted by Lessee the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement shall be deemed to be a contract under the laws of the State of Illinois and, for all

purposes, shall be construed in accordance with the laws of said State.

CHICAGO AND NORTH WESTERN
TRANSPORTATION COMPANY,

by

_____
Senior Vice President-Finance

[Corporate Seal]

Attest:

_____
Assistant Secretary