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INTERSTATE COMMERCE COMMISSION

GT
Grand Trunk Western Railroad Co
131 West Lafayette Blvd.
Detroit, MI 48226
962-2260

RECEIVED
SEP 19 3 27 PM '78
I.C.C.
FEE OPERATION BR.

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

September 15, 1978
File No. 352

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Dear Sir:

Enclosed for recordation pursuant to Section 20c of the Interstate Commerce Act are counterparts of the following documents:

1. Conditional Sale Agreement dated as of July 20, 1978, between General Motors Corporation (Electro-Motive Division) and Grand Trunk Western Railroad Company.

2. Agreement and Assignment dated as of July 20, 1978, in respect to the aforesaid Conditional Sale Agreement, between General Motors Corporation (Electro-Motive Division) and National Bank of Detroit as agent and assignee.

The addresses of the parties to the aforementioned agreements are:

Vendor: General Motors Corporation,
Electro-Motive Division
LaGrange, Illinois 60525

Vendee: Grand Trunk Western Railroad Co.
131 West Lafayette Boulevard
Detroit, Michigan 48226

Assignee: National Bank of Detroit
Woodward Avenue at Fort Street
Detroit, Michigan 48226

8-2602A180

Date SEP 19 1978
Fee $ 50

ICC Washington, D. C.

The equipment covered by the aforementioned agreements consists of 20 GP38-2 2000 H.P. locomotives bearing road numbers 5812-5831, both inclusive, and also bearing the legend, "Ownership subject to a security interest filed under the Interstate Commerce Act, Section 20c."

Enclosed is our check for $50 for the required recordation fee. Please accept for recordation one counterpart of each of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them in the enclosed, addressed envelope along with your fee receipt.

The undersigned is the Vendee mentioned in the enclosed documents and has knowledge of the matters set forth therein.

Sincerely,

Mary P. Sclawy
Attorney

MPS:dkh

Encs.

Interstate Commerce Commission
Washington, D.C. 20423

9/21/78

OFFICE OF THE SECRETARY

Mary P. Sclawy, Atty.
Grand Trunk Western Railroad Co.
131 West Lafayette Blvd.
Detroit, Michigan 48226

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 20(c) of the Interstate Commerce Act, 49 U.S.C. 20(c), on 9/19/78 at 3:30pm, and assigned recordation number(s) 9701 & 9701-A

Sincerely yours,

H.G. Homme, Jr.,
Acting Secretary

Enclosure(s)

SE-30-T
(2/78)

CONDITIONAL SALE AGREEMENT

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CONDITIONAL SALE AGREEMENT

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ACKNOWLEDGEMENTS

SCHEDULE A--MISCELLANEOUS

SCHEDULE B--SPECIFICATIONS

CONDITIONAL SALE AGREEMENT dated as of July 20, 1978, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the "Builder") and GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan and Indiana corporation (hereinafter called the "Railroad"), and GRAND TRUNK CORPORATION, a Delaware corporation (hereinafter called the "Guarantor").

WHEREAS the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the equipment described in Schedule B hereto (hereinafter called the "Equipment"); and

WHEREAS the Guarantor is willing to guarantee to the Vendor (as defined in Article 1) the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Railroad under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

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

ARTICLE 1. Certain Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the Builder and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, any assignee 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. The term "Builder", whenever used in this Agreement, means, both before and after any such assignment, General Motors Corporation (Electro-Motive Division), and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 2. Construction and Sale. Pursuant to this Agreement the Builder shall construct the units of the Equipment as described in Schedule B hereto at its plant set forth in said Schedule B and will sell and deliver to the

Railroad, and the Railroad will purchase from the 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 set forth therefor in Schedule B hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (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 the applicable Specifications, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment, and each unit of the Equipment will be new equipment.

ARTICLE 3. Inspection and Delivery. The Builder will deliver the units of Equipment to the Railroad at its plant set forth in Schedule B or at such other place or places as the Railroad and the Builder may agree, freight charges if any, prepaid, in accordance with the delivery schedule set forth in Schedule B hereto; provided, however, that the Builder shall have no obligation to deliver any unit of its Equipment hereunder at any time after the commencement of any proceedings specified in clause 9(c) or (d) of Article 17 hereof or if any event of default (as described in Article 17 hereof), or event which with lapse of time and/or demand could constitute such an event of default, shall have occurred.

The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond its 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 equipment or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before July 1, 1979 or such other date as the parties may agree upon, shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Builder and the Railroad shall execute

an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Builder's failure to deliver units of Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such units and pay the full purchase price therefor, determined as provided in this Agreement, if and when such units shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such units, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad, and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment in accordance with its standard quality control practices. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such unit or units, and if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or an authorized representative of the Railroad shall execute and deliver to the Builder a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Article 8 hereof; provided, however, that the Builder shall not thereby be relieved of its warranty referred to in Article 15 hereof.

On delivery of each such unit hereunder at the place specified for delivery, the Railroad will assume the responsibility 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 such unit.

ARTICLE 4. Purchase Price and Payment. The base price per unit of the Equipment is set forth in Schedule B hereto. Such base price is subject to such increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased.

If the aggregate Purchase Price of Equipment for which settlement is to be made under this Agreement is in an amount in excess of $9,558,750, the Railroad may, at its option, exclude from this Agreement any unit or units of Equipment for which settlement has not been made and the Builder (and any assignee thereof) shall, upon request of the Railroad enter into an agreement excluding from this Agreement such unit or units of Equipment then proposed to be settled for and specified by the Railroad but fully preserving the Builder's security interest in such Equipment in a manner acceptable to the Builder, as will, after giving effect to such exclusion, reduce the aggregate Purchase Price under this Agreement to not more than $9,558,750, and the Railroad agrees to purchase any such unit or units so excluded from this Agreement and to pay the Builder in cash on the date such unit or units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale, equipment trust or other appropriate method of financing, as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

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

(a) on the Closing Date (as hereinafter defined) (i) an amount equal to 20% of the aggregate Purchase Price of the Equipment plus (ii) the amount, if any, by which the aggregate Purchase Price of all units of the Equipment, as stated in the invoice or invoices presented in respect of the Closing Date (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds 125% of the amount on deposit with the agent pursuant to the Finance Agreement under whi ch the Vendor is acting as agent for the institutional investors therein named (hereinafter called the "Finance Agreement").

(b) in 30 consecutive equal semi-annual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all of the Equipment less the amount paid with respect thereto pursuant to subparagraph (a) of this paragraph (the aggregate of said installments being hereinafter

called the "Conditional Sale Indebtedness"). Such installments of the Conditional Sale Indebtedness shall be payable semi-annually on January 15 and July 15 in each year commencing on July 15, 1979, to and including January 15, 1994. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the Closing Date at the rate of 9-1/4% per annum. Such interest shall be payable, to the extent accrued, on January 15 and July 15, in each year, commencing July 15, 1979.

The term "Closing Date" shall mean such date (on or after January 15, 1979, and prior to July 1, 1979, or such other date as the parties may agree) not more than ten business days following presentation by the Builder to the Railroad of the invoice and the Certificate or Certificates of Acceptance for the Equipment, as shall be fixed by the Railroad by written notice delivered to the Vendor at least six business days prior to the Closing Date designated therein; provided, however, that the aggregate Invoiced Purchase Prices of the Equipment shall not exceed 125% of the amount on deposit on the Closing Date with the Vendor pursuant to the Finance Agreement.

The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Detroit, Michigan, or New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10-1/4% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 9 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

In the event the Vendor, pursuant to Article 16 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Vendor that the Conditional Sale Indebtedness and interest thereon will be duly and punctually paid when due and all other obligations of the Railroad hereunder and under the Finance Agreement will be duly and punctually performed, whether at stated maturity or by declaration or otherwise, irrespective of any enforcement against the Railroad of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its guarantee hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder. The Guarantor hereby agrees that any rights that it may acquire by reason of performance of its obligations hereunder, by subrogation or otherwise, may not be exercised against the Railroad under this Agreement with respect to any of the units of the Equipment. The enforceability and validity of this guarantee shall not be affected in any way by any lease of the Equipment.

ARTICLE 6. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Vendor for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment,

shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called "Impositions"), all of which Impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all Impositions which may be imposed upon the Equipment delivered to it or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all Impositions which might in any way affect the title of the Vendor or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any Impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such Impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. If any such Impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Railroad shall reimburse the Vendor upon presentation of an invoice therefor, and any amounts so paid by the Vendor shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any Impositions so paid unless the Vendor shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Vendor) or unless the Railroad shall have approved the payment thereof.

ARTICLE 7. Title to the Equipment. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment that are not readily removable without damage to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 9 hereof, when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and

all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens, security interests and other encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 9 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeiture or damages for failure to execute and deliver any such bill of sale or instrument or to file any certificate of payment in complaince with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill of sale or instrument or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 8. Marking of the Equipment. The railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule B hereto, or, in the case of Equipment not there listed, such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership Subject to a Security Interest Filed under the Interstate Commerce Act, Section 20c" or other appropriate markings approved by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Vendor's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may

be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the preceding paragraph, the Railroad will not allow any name 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 Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 9. Casualty Occurrences. In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called "Casualty Occurrences"), the Railroad shall promptly (after it has knowledge of such Casualty Occurrence) and fully inform the Vendor in regard thereto. When the aggregate Casualty Value (as defined herein) of all units of the Equipment having suffered a Casualty Occurrence hereunder (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have theretofore been made to the Vendor pursuant to this Article 9) shall exceed $450,000 (or such lesser amount as the Railroad may elect), the Railroad, within 30 days after the Railroad has knowledge of such event, shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment having suffered a Casualty Occurrence and shall promptly pay to the Vendor a sum equal to the Casualty Value, as of the date of such payment, of such unit or units of the Equipment having suffered a Casualty Occurrence.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to the preceding paragraph of this Article 9 shall be used, as the Railroad shall direct in a written instrument filed with the Vendor within 30 days but not less than 10 days prior to the due date of the next installment of Conditional Sale Indebtedness, in whole or in part, (a) to prepay installments of Conditional Sale Indebtedness or (b) applied toward the cost of a unit or units of equipment of the same type as the

Equipment first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. Any unit of replacement equipment shall have a remaining useful life (as evidenced by a certificate of an operating officer of the Railroad) at least as long as that which the Equipment being replaced would have had, but for the Casualty Occurrence. If such replacement equipment shall be equipment theretofore used in railroad service, the Railroad shall deliver to the Vendor a certificate of an officer of the Railroad that the cost of such equipment does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service. In case any money is applied pursuant to this Article 9 to prepay indebtedness, it shall be so applied to reduce each installment of Conditional Sale Indebtedness thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the original Purchase Price thereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 9) as of the date payment is made with respect to such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Vendor as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 9) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition by the Vendor of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 8 hereof. Any and all replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement; provided, however, that nothing herein shall result in the Builder having any liability or obligation with respect to any replacement unit or units not manufactured by it. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the

second paragraph of Article 13 hereof and shall be put and shall remain in the name of the Vendor subject to the provisions hereof, and the Railroad shall execute. acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Vendor a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is equipment of the same type as the Equipment, in each case first put into service no earlier than the date of this Agreement, and has been marked as required by the provisions of this Article 9 and certifying, in the event such replacement unit is new equipment, the cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, that the cost thereof to the Vendor does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate equal to 1/15 of such original cost for each year in service, and that such replacement equipment has a remaining useful life at least as long as that which the Equipment being replaced would have had but for the Casualty Occurrence; and

(2) an opinion of counsel for the Railroad that the Vendor has a valid and perfected first security title to and interest in such replacement unit, free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, that such unit has become subject to this Agreement and that all necessary filings and recordings have been made to perfect the title and interests of the Vendor therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 9 shall, if the Railroad shall so direct in writing, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United

States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least $1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called "Investments"). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Vendor on any Investments shall be held by the Vendor and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Vendor thereon, up to the cost (including accrued interest) thereof, shall be held by the Vendor for application pursuant to this Article 9, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Vendor an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Vendor in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 9 (including, for this purpose, Investments) shall be applied by the Vendor as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Vendor shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

ARTICLE 10. Maintenance; Insurance; Compliance with Laws and Rules.

(a) The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense.

(b) The Railroad will at all times prior to the payment of the full indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it. For this purpose "insurance" shall include participation in the insurance pool of the Canadian National Railways, ~~or~~ "self-insurance" provided the Railroad maintains adequate reserves to cover the risks not otherwise insured.

(c) During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its 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, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equipment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing March 31, 1980, the Railroad shall furnish to the Vendor a statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) or any substantial modification, and such other

information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request and (b) stating that, in the case of all Equipment repaired, modified or repainted during the period covered by such statement, the numbers and markings required by Article 8 hereof have been preserved or replaced. The Vendor shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Vendor may request during the term of this Agreement.

ARTICLE 12. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Builder to the Railroad, except that the Railroad will not assign or permit the assignment of any Equipment for service outside the United States except in normal interchange and as provided in Article XVI.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit or part thereof, equal or superior to the Vendor's title thereto or property therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Vendor for any amounts so paid by the Vendor unless the Railroad shall have approved the payment thereof or the Vendor shall have received an opinion of counsel that such claim would constitute a lien, charge or security interest on or in the Equipment equal or superior to

the Vendor's interest therein adversely affecting the property or rights of the Vendor in or to the Equipment.

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 deliquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the oridinary course of business and, in each case, not deliquent.

ARTICLE 14. Railroad's Indemnities. The Railroad agrees to idemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Vendor or the transfer of title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabiities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

ARTICLE 15. Patent Indemnities; Builder's Warranty of Material and Workmanship. The Builder shall defend any suit or proceeding brought against the Railroad and/or each assignee of the Builder's rights under this Agreement so far as the same is based on a claim that the Equipment of the 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 the Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Railroad 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, the Builder shall at its option, so long as the Equipment remains operational, and at its own expense either procure for the Railroad and any such assignee the right to continue using such unit or part, or replace the same with noninfringing equipment subject to this Agreement, or modify it so it becomes noninfringing, or

remove such unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under this Agreement if this Agreement has been so assigned, which refund, to the extent of the unpaid Conditional Sale Indebtedness, shall be applied in like manner as payments in respect of Casualty Occurrences under Article 9 of this Agreement and, as long as no event of default or event which with the lapse of time and/or demand could constitute an event of default under this Agreement shall have occurred and be continuing, the balance shall be paid by such assignee to the Railroad.

The 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.

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

The Railroad likewise will indemnify, protect and hold harmless the Vendor 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 the Vendor because of the use in or about the construction or operation of any of the Equipment of any article or material specified by the Railroad and not manufactured by the Builder or of any design, system, process, formula or combination specified by the Railroad and not developed or purported to be developed by the Builder which infringes or is claimed to infringe on any patent or other right.

The Builder agrees to and hereby does, to the extent legally possible without impairing any claim, right or cause of action hereinafter referred to, assign, set over and deliver to the Railroad every claim, right and cause of action which the Builder has or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials specified by the Railroad and purchased or otherwise acquired by the Builder for use in or about the construction or operation of any of the Equipment on the ground that any such design, system, process, formula, combination, article or material or

operation thereof infringes or is claimed to infringe on any patent or other right. The Builder further agrees to execute and deliver to the Railroad or the users of the Equipment all and every such further assurance as may be reasonably requested by the Railroad more fully to effectuate the assignment and delivery of every such claim, right and cause of action. The Builder will give notice to the Railroad of any claim known to the Builder from which liability may be charged against the Railroad hereunder and the Railroad will give notice to the Builder of any claim known to the Railroad from which liability may be charged against the Builder hereunder.

Such covenants of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Builder's warranty of material and workmanship is set forth in Schedule A hereto.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 12 hereof, transfer (except on a temporary basis) the right to possession of any unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof or the District of Columbia which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and reasssigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of its obligations to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and indemnities contained or

referred to in Article 15 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 2, 3, 4, 6, 14 and 15 hereof, and this Article 16 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

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

The Railroad and the Guarantor recognize that is the custom of railroad equipment manufacturers to assign conditional sale agreements and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad and the Gurantor expressly and severally represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsovever arising by reason of any other indebtedness or liability at any time owing to the Railroad or the Guarantor, as the case may be, by the Builder.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment,

deliver to the assignee, at least five business days prior to the Closing Date, all documents required by the terms of such assignment to be delivered to such assignee, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to such assignee such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

If this Agreement shall have been assigned by the Builder and the assignee shall not make payment to the Builder for the Equipment as provided in the instrument making such assignment, such Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the parties hereto will, upon the request of the Builder, enter into an appropriate written agreement excluding from this Agreement those units of Equipment for which the aggregate Purchase Price shall not have been received, but fully preserving the Builder's security title in such Equipment in a manner acceptable to the Builder, and the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such units of the Equipment, together with interest from the day such payment was due to the date of payment by the Railroad at the lesser of (x) the highest prime rate of interest charged by any of the four New York City banks having the largest total assets, in effect on the date such payment was due or (y) the highest rate permitted by law.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder and the same shall not have been paid by the Guarantor; or

(b) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or

performed or to make provision satisfactory to the Vendor for such compliance; or

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

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

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

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid and premium, if any, thereon, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated. The Railroad and the Guarantor shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor 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 had been made. Notwithstanding the provisions of this paragraph, it is expresssly understood and agreed by the Railroad and the Guarantor 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 18. Remedies. At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the

Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units therof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises 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 facilties or means of the Railroad.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Vendor, the Railroad shall, at its own expense, forthwith and in the usual mannner (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 part of the Equipment has been interchanged to return the Equipment so interchanged), cause the Equipment to be moved to such point or points on its lines as shall be designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor and cause the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Vendor upon any sale, lease or other disposal of all or any part of the Equipment by the Vendor. At the option of the Vendor, the Vendor may keep Equipment on any of the lines or premises of the Railroad until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users; provided, however, that the Railroad shall not be liable in connection with such inspection except in the case of negligence of the Railroad or any of its employees or agents for any injury to or death of any person exercising inspection rights under this paragraph. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the

Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad and the Guarantor by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing and storing the Equipment and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

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

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisment for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Vendor shall be the purchaser of the Equipment, it shall not

be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder. From and after the date of any such sale, the Railroad shall pay to the purchaser the mileage equalization charge for each unit of Equipment which shall not have been assembled, as hereinabove provided, by the date of such sale for each day from the date of such sale to the date of delivery to the purchaser at such sale.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults in payments. The Vendor and the Railroad agree that the Vendor shall be entitled to all rights provided for in §77(j) of the Bankruptcy Act or any comparable provision of any amendment therto, or of any other bankrupcty act, so that the Vendor shall have the right to take possession of the Equipment upon an event of default under this Agreement regardless of whether or not the Railroad is in reorganization.

If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate

per annum set forth in Article 4 hereof applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

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

The foregoing provisions of this Article 18 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad and the Guarantor to the full extent permitted by law, hereby waive 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 unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section

20c of the Interstate Commerce Act and to be duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit to be duly published, or adequate provision made therefor in the Canada Gazette in accordance with said Section 86 and in any other place where filing is required by applicable state or Federal, Canadian or provincial law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Vendor for the purposes specified in the immediately preceding sentence of this Article 20. The Railroad will furnish to the Vendor from time to time an opinion of counsel for the Railroad to the effect that all necessary filings and recordings have been made to protect the interests of the Vendor in and to the Equipment.

The Railroad will promptly furnish to the Vendor certificates or other evidence satisfactory to the Vendor of such filing, registering, depositing and recording.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Builder) incident to this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at its chief place of business at the following specified addresses:

(a) to the Railroad at 131 W. Lafayette Boulevard, Detroit, Michigan 48226.

(b) to the Guarantor at 477 Congress St., Portland Maine 04101.

(c) to the Builder, at LaGrange, Illinois 60525, and

(d) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee, or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Heading; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedules hereto, exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the State of Michigan. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Michigan; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof or any financing statement or other similar instrument in respect of this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, such counterparts together shall constitute but one and the same contract. Although this Agreement is dated, for convenience, 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.

The Builder has assigned to National Bank of Detroit (herein called the Agent) pursuant to an Agreement and Assignment (herein called the Assignment) dated as of the date hereof and attached hereto all its right, title and interest in and to this Agreement (except as specifically excepted by the Assignment).

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

by P.K. Hoglund
Vice President

[Corporate Seal]

Attest:

M.R. Thomas
Asst. Secretary

GRAND TRUNK WESTERN RAILROAD COMPANY

by
Vice President

[Corporate Seal]

Attest:

E. J. Fontaine
Secretary

GRAND TRUNK CORPORATION

by
Vice President

[Corporate Seal]

Attest:

E. J. Fontaine
Asst. Secretary

State of Illinois :
:ss
County of Cook :

On this 29TH day of AUGUST, 1978, before me, the undersigned notary public, appeared P. K. HOGLUND who acknowledged himself to be a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires January 17, 1979

[Notarial Seal]

State of Michigan

:ss

County of Wayne

On this 31st day of August, 1978, before me, the undersigned notary public, appeared H. Blevin who acknowledged himself to be a vice president of GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan and Indiana corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

J. A. Brewer

Notary Public

My commission expires

[Notarial Seal]

J. A. BREWER
Notary Public, Wayne County, Mich.
My Commission Expires Dec. 16, 1981

State of Michigan :
:ss
County of Wayne :

On this 31st day of August, 1978, before me, the undersigned notary public, appeared J. H. Burdshaw who acknowledged himself to be ~~a~~ President of GRAND TRUNK CORPORATION, a Delaware corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of said corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

J. A. Brewer
Notary Public

My commission expires

[Notarial Seal]

J. A. BREWER
Notary Public, Wayne County, Mich.
My Commission Expires Dec. 16, 1981

SCHEDULE A

Warranty by General Motors Electro-Motive Division

Builder warrants to the Railroad that the Equipment is of the kind and quality described in the specifications set forth in Schedule B and is suitable for the ordinary purposes for which such Equipment is used.

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

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

There are no warranties, expressed or implied, made by Builder except the warranties set out above.

SCHEDULE B

Builder	Electromotive Division of General Motors
Type	GP38-2 2,000 H.P. Locomotives
Builder's Specifications	
Builder's Plant	McCook, Illinois
Quantity	20
Unit Base Price	$477,905
Total Base Price	$9,558,100
Serial Numbers (Inclusive)	5812-5831
Estimated Time and Place of Delivery	McCook, Illinois January, 1979