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9028-A  
RECORDATION NO. .... Filed & Recorded

OCT 6 1977-12 15 PM

INTERSTATE COMMERCE COMMISSION

9028  
RECORDATION NO. .... Filed & Recorded

OCT 6 1977-12 15 PM October 4, 1977

INTERSTATE COMMERCE COMMISSION

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OCT 6 1977  
Date .....

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Fee \$ .....

Washington, D. C.

Secretary of the  
Interstate Commerce Commission  
Twelfth Street and Constitution Avenue  
Washington, D.C. 20423

Dear Sir:

Enclosed please find three fully executed copies of each of the following documents:

1. a Conditional Sale Agreement, dated as of July 1, 1977, by and between James J. Callahan and Robert M. Haber, as Vendor, and Consolidated Rail Corporation pertaining to the conditional sale and purchase of miscellaneous items of roadway maintenance equipment; and

2. a related Agreement and Assignment, dated as of July 1, 1977, between James J. Callahan and Robert M. Haber, and The Fidelity Bank, as Agent for various banks.

Please file and record the enclosed documents pursuant to Section 20c of the Interstate Commerce Act.

The bearer of this letter will present an additional two counterparts of each of the two above-identified documents, and I would be grateful if the filing officer would arrange to have the appropriate filing stamp affixed to each of these two and return them to the bearer in order to evidence the filing of these documents.

Sincerely yours,

*James A. Hunter, Jr.*  
James A. Hunter, Jr.

JAH:kh

Enclosure

*Countersigned Ingrid Olson*

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/6/77

OFFICE OF THE SECRETARY

**James A. Hunter, Jr.**  
**Morgan, Lewis & Bockius**  
**123 S. Broad Street**  
**Phila. Pa. 19109**

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 **10/6/77** at **12:15pm** and assigned recordation number(s)

**9028 & 9028-A**  
Sincerely yours,

  
**H.G. Homme, Jr.**  
Acting Secretary

Enclosure(s)

SE-30-T  
(6/77)

RECORDATION NO. 9028 Filed & Recorded

OCT 6 1977-12 12 PM

INTERSTATE COMMERCE COMMISSION

CONDITIONAL SALE AGREEMENT

Dated as of July 1, 1977

between

JAMES J. CALLAHAN

and

ROBERT M. HABER

as Vendor,

and

CONSOLIDATED RAIL CORPORATION

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Filed and recorded with the Interstate Commerce Commission pursuant to Section 20c of the Interstate Commerce Act on \_\_\_\_\_, 1977, at \_\_\_\_\_ A.M., Recordation Number \_\_\_\_\_.

CONDITIONAL SALE AGREEMENT, dated as of July 1, 1977, between JAMES J. CALLAHAN and ROBERT M. HABER, individuals residing in Springfield, Pennsylvania and Paoli, Pennsylvania, respectively (hereinafter collectively called the "Equipment Suppliers" or the "Vendor" as the context may require, all as more particularly set forth in Article 1 hereof), and CONSOLIDATED RAIL CORPORATION, a Pennsylvania corporation (hereinafter called the "Railroad").

WHEREAS, the Equipment Suppliers have agreed to cause the manufacture of and to assemble, acquire, sell and deliver to the Railroad, and the Railroad has agreed to purchase, all of the equipment described in Schedule 1 hereto (hereinafter called the "Equipment");

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE 1. Assignment; Definitions. The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, the two individuals first named in the preamble to this Agreement and any successor or successors for the time being to their rights and duties hereunder, 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 assignors as regards any rights hereunder that are retained or excluded from any assignment or which are not vested in any assignee or assignees until satisfaction of conditions contained in such assignment. The term "Equipment Suppliers", whenever used in this Agreement, means, both before and after any such assignment, the two individuals first named in the preamble to this Agreement and any successor or successors for the time being to their rights and duties hereunder.

ARTICLE 2. Construction and Sale. (a) Pursuant to this Agreement, the Equipment Suppliers shall, in accordance with purchase orders therefor which have been assigned to them by the Railroad (collectively, the "Purchase Orders"), cause the manufacture of, strictly in accordance with the Purchase Orders, and assemble, acquire, sell and deliver to the Railroad, and the Railroad shall purchase from the Equipment Suppliers and accept delivery of and pay for (as hereinafter provided), the Equipment each unit of which shall be constructed strictly in accordance with the specifications, if any, set forth with respect thereto in Schedule 1 hereto and in accordance with such modifications thereof as may from time to time be agreed upon in writing between the Equipment Suppliers and the Railroad (such specifications, as the same may be modified from time to time, being hereinafter called the "Specifications"). The design, quality and component parts of each unit of the Equipment shall where applicable conform, on the date of completion of manufacture and delivery of each thereof, to all United States 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 the character of such units of Equipment.

(b) Prior to the Cut-Off Date (as defined in Article 4 hereof), the Railroad and the Equipment Suppliers may agree upon the sale and purchase, under the terms hereof, of items of roadway maintenance equipment in addition to, or in substitution for, the items of roadway maintenance equipment specifically listed in Item 1 of Schedule 1 hereto, provided that the aggregate total cost of all the Equipment shall not exceed \$12,035,714. Upon (i) the execution and delivery of an amendment hereto modifying Item 1 of Schedule 1 to this Agreement to reflect the incorporation therein of such additional or substituted items, described in each case by specific references to type, serial number or numbers, quantity, unit cost and total cost, all in the manner set forth in such Schedule, (ii) the delivery to the agent, if any, referred to in paragraph (f) of Article 15 hereof of a copy of such amendment, duly certified by any Vice President or Assistant Treasurer of the Railroad under a certificate stating that each such additional item identified in such amendment is an item of roadway maintenance equipment which is useful and is to be used by the Railroad in its roadway maintenance operations and that the cost of such unit is accurately reflected in such amendment, and (iii) the delivery to such agent of original counterparts of the various purchase orders issued and contracts entered into by the Railroad with the various manufacturers and builders of such items and the various instruments of assignment whereby such purchase orders and contracts have been assigned by the Railroad to the Equipment Suppliers, such items of equipment shall thereupon and thenceforth become and be "units of the Equipment" for all purposes of this Agreement.

ARTICLE 3. (a) Inspection and Delivery. The Equipment Suppliers will deliver or cause to be delivered to the Railroad the units of Equipment at such times and places as may be designated by the Railroad from time to time; provided, however, that the Equipment Suppliers shall not have any obligation to deliver any unit of Equipment hereunder at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 hereof or if any event of default (as described in Article 16 hereof), or any event which with the giving of notice or demand or the lapse of time, or both, could constitute such an event of default, shall have occurred and be continuing.

(b) The obligation of the Equipment Suppliers as to time of delivery is subject, however, to delays resulting from causes beyond the reasonable control of the Equipment Suppliers or any of their contractors or subcontractors 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 plants, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

(c) Notwithstanding the provisions of paragraph (b) of this Article 3, any Equipment not delivered, accepted and settled for pursuant to Article 4 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Equipment Suppliers and the Railroad shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom. If the Equipment Suppliers' failure to deliver Equipment so excluded from this Agreement resulted from one or more of the causes set forth in paragraph (b) of this Article 3, the Railroad shall nevertheless be obligated to accept such Equipment and pay the full price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Equipment Suppliers, such payment to be in cash on the delivery of such Equipment, 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 Equipment Suppliers.

(d) During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Equipment Suppliers shall grant or cause to be granted to such authorized inspectors reasonable access to each plant at which any unit of the Equipment is being manufactured. The Equipment Suppliers agree to cause all materials used in the construction of the Equipment to be inspected strictly in accordance with the standard quality control practices of the manufacturer thereof. Upon completion of each unit or of a number of units of 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 Equipment Suppliers a certificate of acceptance (hereinafter referred to as a "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 7 hereof; provided, however, that no such acceptance shall be deemed to release or relieve any party of any warranty referred to in Article 14 hereof.

(e) On such delivery of each unit of Equipment 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. (a) The base price or prices per unit of the Equipment are set forth in Schedule

1 hereto. Such base price or prices are subject to such increase or decrease as is agreed to in writing by the Equipment Suppliers and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased, including without limitation any increase pursuant to the presentation of a supplemental invoice as hereinafter provided.

(b) For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of Equipment, delivered to and accepted by the Railroad (each such group being hereinafter called a "Group"), as shall be agreed upon by the Vendor and the Railroad.

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

(i) on each Closing Date (as hereinafter defined) an amount equal to 30% of the Purchase Price of all units of the Equipment for which settlement is then being made, as stated in the invoice or invoices (including the supplemental invoice or invoices hereinafter provided for) presented in respect of such Closing Date (said invoiced prices being hereinafter called the "Invoiced Purchase Prices"), plus so much of such Invoiced Purchase Price as, when added to the Invoiced Purchase Price of all units of the Equipment for which settlement has theretofore been made, exceeds \$12,035,714; and

(ii) in 10 consecutive equal (except as provided in paragraph (e) of this Article 4 and except for appropriate adjustment of the final installment in case the amount payable pursuant to this subparagraph (ii) shall not, when divided by 10, result in an amount ending in an integral cent) semiannual installments, as hereinafter provided, an amount equal to the aggregate of the Invoiced Purchase Prices for all the Equipment less the amount paid or payable with respect thereto pursuant to subparagraph (i) of this paragraph (the aggregate of said installments being hereinafter called the "Conditional Sale Indebtedness").

In the event that on any Closing Date the final Purchase Price of any Group has not been finally determined, the invoice presented by the Equipment Suppliers may be for an estimated Purchase Price, subject to adjustment upon determination of the final Purchase Price, and a supplemental invoice may be presented by the Equipment Suppliers for any increase in the Purchase Price; it being understood and agreed by the Equipment Suppliers that any prior preliminary invoice or invoices presented by the Equipment Suppliers shall be in an amount not in excess of the aggregate final Purchase Price of all the units of the Equipment in such Group. If a supplemental invoice is presented to the Railroad by the Equipment Suppliers at least ten (10) days prior to any subsequent Closing Date with respect to any Group of the Equipment, such supplemental invoice shall be settled for at such subsequent Closing Date. If a supplemental invoice is presented to the Railroad by the Equipment Suppliers after, or

less than ten (10) business days prior to, the Closing Date when all units of the Equipment shall have been delivered, accepted and settled for, but prior to the Cut-Off Date (as hereinafter defined), the Railroad shall designate a Closing Date with respect to such supplemental invoice. If a supplemental invoice for any units of Equipment is presented by the Equipment Suppliers after the Cut-Off Date, it shall be paid in cash by the Railroad to the Equipment Suppliers or their designees in accordance with the terms of the original Purchase Order given by the Railroad in respect of such units.

(d) The installments of the Conditional Sale Indebtedness payable pursuant to subparagraph (c)(ii) of this Article 4 shall be payable semiannually on each January 1 and July 1, commencing January 1, 1980 to and including July 1, 1984. The unpaid principal amount of the Conditional Sale Indebtedness outstanding from time to time shall bear interest at a rate per annum (calculated on the basis of a 360-day year of twelve 30-day months) which shall be (i) 7-3/4% prior to July 1, 1978, (ii) 7-7/8% from July 1, 1978 to and including June 30, 1979, (iii) 8% from July 1, 1979 to and including June 30, 1980, (iv) 8-1/8% from July 1, 1980 to and including June 30, 1981, (v) 8-1/4% from July 1, 1981 to and including June 30, 1982, (vi) at the election of the Vendor, exercised on or before July 1, 1982, either the fixed rate of 8-3/8% or the Fluctuating Rate (as hereinafter defined) from July 1, 1982 to and including June 30, 1983, and (vii) at the election of the Vendor, exercised on or before July 1, 1983, either the fixed rate of 8-1/2% or the Fluctuating Rate from July 1, 1983 until the Conditional Sale Indebtedness shall have been paid in full, subject to paragraph (e) of this Article 4. As used in the preceding sentence and in such paragraph (e) the term "Fluctuating Rate" shall mean the rate per annum (calculated on the basis aforesaid) which shall be 2% in excess of the prime commercial loan rate of The Fidelity Bank for short-term borrowings made by its largest and most creditworthy borrowers, which Fluctuating Rate shall change when and as such prime commercial loan rate shall change. Such interest shall be payable semiannually on each January 1 and July 1, commencing January 1, 1978 and continuing until the Conditional Sale Indebtedness shall have been paid in full. The Conditional Sale Indebtedness may be prepaid in whole at any time or in portions, consisting of \$250,000 or multiples thereof, from time to time without premium or penalty but with interest accrued on the prepaid Conditional Sale Indebtedness from the last date on which such interest was paid to the date of such prepayment. All such voluntary prepayments shall be applied to the prepayment of the installments of the Conditional Sale Indebtedness in the inverse order of their maturity.

(e) The Railroad 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 a rate per annum (calculated on the basis aforesaid) equal to the greater of 10-1/2% and 2% in excess of the Fluctuating Rate from time to time, accrued from the due date of such amount until the same shall have been paid in full with interest as aforesaid.

(f) The term "Closing Date" with respect to any Group of the Equipment shall mean such date on or after July 1, 1977

but not later than the Cut-Off Date as shall be fixed by the Railroad by written notice delivered to the Vendor at least five (5) business days prior to the Closing Date designated therein but not more than ten (10) business days following the date of presentation by the Equipment Suppliers to the Railroad of an invoice or a supplemental invoice, and, with respect to any Group of the Equipment, the Certificate or Certificates of Acceptance for such Group. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which state banking institutions in Philadelphia or Pittsburgh, Pennsylvania are authorized or obligated to remain closed. As used herein the term "Cut-Off Date" shall mean the earliest of (i) the Closing Date for the final Group of the Equipment hereunder, (ii) January 1, 1978, and (iii) the date on which the Vendor acquires actual knowledge (x) of an event of default hereunder or an event which, with the giving of notice or demand or the lapse of time, or both, would constitute an event of default hereunder or (y) of a default under any finance agreement entered into by the Railroad, the Vendor and any banks or institutional investors providing for the financing of the acquisition of the Equipment.

(g) All payments provided for in this Agreement shall be made in good, collected funds and 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. The Railroad shall have the privilege of prepaying the Conditional Sale Indebtedness in whole at any time or in portions consisting of \$250,000 or multiples thereof from time to time without premium or penalty but with interest thereon accrued to the date of prepayment. Each such prepayment shall be applied against the installments of the Conditional Sale Indebtedness in the inverse order of their maturity.

(h) In the event the Vendor, pursuant to Article 15 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, in which case the Railroad shall make, such payments to the assignee at such address as shall be supplied to the Railroad by the assignee from time to time.

ARTICLE 5. 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 and other than general corporation or franchise taxes or like taxes measured by the Vendor's capital, capital stock or net worth) 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 interest therein 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 security interest 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 reasonable opinion of the Vendor, adversely affect the interest 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. The Railroad hereby agrees to indemnify the Equipment Suppliers and hold them harmless from and against any and all tax liability which may arise as a result of their participation in this transaction.

ARTICLE 6. Security Interest in the Equipment. The Vendor shall and hereby does retain a security interest 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 (except, in the case of rolling stock, any communications, signal and automatic control equipment or devices having a similar use which have been added to any unit of Equipment by the Railroad 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 Interstate Commerce Commission, the United States Department of Transportation or any other applicable regulatory body) 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 8 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with the 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 and releasing its interest 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 21 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such termination statements and other instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the release of the security interest of the Vendor in the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 8 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, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 7. 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 1 hereto, or in the case of Equipment not having a number 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 such unit, in letters not less than one inch in height, the words "The Fidelity Bank, as Agent, Security Owner" 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 interest in the Equipment and its rights under this Agreement. The Railroad will not place such unit in use or operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any markings which may be removed, defaced, obliterated 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 this paragraph, the Railroad 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 Railroad may cause the Equipment to be lettered with the name or initials or other insignia of the Railroad or its affiliates.

ARTICLE 8. Casualty Occurrences. (a) 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 (any such occurrence being herein-after called a "Casualty Occurrence"), the Railroad shall fully inform the Vendor in regard thereto promptly after it has knowledge of such Casualty Occurrence. When the aggregate Casualty Value (as defined herein) of all units having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 8) hereunder shall exceed \$100,000, the Railroad shall, within thirty (30) days after it has knowledge of such event, pay to the Vendor a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Vendor a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

(b) Any money paid to the Vendor pursuant to paragraph (a) of this Article 8 shall, as the Railroad may direct in a written instrument filed with the Vendor, be applied on or before the next installment date for the payment of Conditional Sale Indebtedness occurring more than 180 days following the date of such payment to the Vendor (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay installments of Conditional Sale Indebtedness or toward the cost of a unit or units of equipment to replace units suffering a Casualty Occurrence; and, in the event no direction is so received by the Vendor, such moneys shall be applied by the Vendor to the prepayment of Conditional Sale Indebtedness, as aforesaid. In case any money is applied to prepay indebtedness, it shall be so applied to installments thereof in the inverse of their maturity.

(c) 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 (after subtraction from such original Purchase Price of an amount which bears the same ratio to the aggregate of all payments made by the Railroad under the provision of sub-

paragraph (i) of paragraph (c) of Article 4 as the original Purchase Price of such unit bears to the original aggregate Purchase Price of all the Equipment) as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 8) 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 8) as of the date payment is made with respect to the Casualty Occurrence involving such replacement unit 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.

(d) The Vendor may, if requested by the Railroad so to do, waive payment by the Railroad of such aggregate Casualty Value, or any portion thereof; provided, however, that any such waiver shall apply only to the specific amount, if any, of the aggregate Casualty Value for which the Vendor shall, in a written notice filed with the Railroad by the Vendor prior to the date when such amount shall have been payable, expressly waive payment; provided, further, that if the Vendor shall be an agent for a group of banks or other institutional investors, such Vendor may not waive payment by the Railroad of any amount payable pursuant to this Article 8 unless each of such investors holding any interest in any of the Conditional Sale Indebtedness then outstanding shall authorize such waiver in writing prior to the date such amount is payable by the Railroad.

(e) The Railroad will cause any replacement unit or units to be marked as provided in Article 7 hereof. Any and all such 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 Equipment Suppliers having any liability or obligation with respect to any replacement unit or units not manufactured under one or more of the Purchase Orders. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by Article 12 hereof and shall be taken initially 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 the Equipment hereunder.

(f) 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, in addition to any settlement documents which may be required pursuant to paragraph (e) of Article 15 hereof:

(1) A certificate of a Vice President, an Assistant Vice President, or the Controller or Chief Accounting Officer of the Railroad certifying that such replacement unit is railroad equipment which has been marked as required by the provisions of this Article 8 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, the cost thereof to the Vendor and that such cost does not exceed the lesser of the fair value thereof and the original cost thereof less depreciation at a rate equal to 1/7th of such original cost for each year in service and 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 security 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, and that such unit has come under and become subject to this Agreement.

(g) So long as no event of default shall have occurred and be continuing, any money paid to the Vendor pursuant to this Article 8 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such direct obligations of the United States of America, or obligations for which the full faith and credit of the United States is pledged to provide for the payment of principal and interest, in each case maturing in not more than one year from the date of such investment, as may be specified in such written direction (such investments being hereinafter called "Investments"). Any such obligations may 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 Investment or upon the direction of the Railroad, which shall be confirmed in writing, to sell such Investment, 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 8, 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.

(h) If one or more events of default shall have occurred and be continuing, all money held by the Vendor pursuant to this Article 8 (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 17 hereof.

(i) 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 such portion of the Casualty Value of such Equipment for which payment shall not have been waived by the Vendor as hereinabove provided, 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.

(j) Once made subject to this Agreement a replacement unit shall be deemed to be a unit of the Equipment for all purposes hereof, subject to specific references herein to units of the Equipment other than replacement units.

ARTICLE 9. Maintenance; Compliance with Laws and Rules.

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. 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 all lawful rules and regulations of the United States Department of Transportation, Interstate Commerce Commission, Occupational Safety and Health Administration and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Railroad or the Equipment, to the extent that such laws, rules and regulations affect the title, operation, use or maintenance of the Equipment, and in the event that such laws, rules or regulations 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, rule or regulation in any reasonable manner which does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor under this Agreement.

ARTICLE 10. Reports and Inspections. On or before July 31 in each year, commencing July 31, 1978, the Railroad shall furnish to the Vendor an accurate statement signed by an officer of the Railroad (i) 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 and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, (ii) stating that all of the other units of

the Equipment are in use and operation and have not been withdrawn from use and (iii) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 7 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 11. 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 and rights of way owned or operated by it either alone or jointly with others and whether under lease 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, from and after delivery of the Equipment by the Equipment Suppliers to the Railroad, but only upon and subject to all the terms and conditions of this Agreement and provided that in no event shall any of the Equipment be physically removed either (i) to any location which is not within the United States of America or (ii) without ten (10) days' prior written notice to Vendor specifying the location or locations in question and accompanied by a cash payment sufficient to cover the cost of the filing of any financing statements deemed necessary by the Vendor, to any location within the United States of America which is not within any of the States of Connecticut, Delaware, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Virginia and West Virginia or the District of Columbia, which seventeen jurisdictions are represented by the Railroad to be the only jurisdictions within the United States of America within which the lines of railroad and rights of way owned or operated by the Railroad are located on the date of this Agreement, provided, further, that the Railroad may remove, or permit the removal of any of the Equipment to any one or more of the provinces of Canada if and to the extent that prior to such removal the Railroad shall have delivered to the Vendor an opinion of counsel, reasonably satisfactory to Messrs. Morgan, Lewis & Bockius of Philadelphia, Pennsylvania, to the effect that all filings and recordings in respect of, deposits of and publications and other acts in respect of this Agreement, the Assignment and the Equipment necessary or appropriate under the laws of Canada or any province thereof or under the United States of America or any state thereof or any other jurisdiction necessary or appropriate in order to perfect or protect the security interest or title of the Vendor in and to the Equipment or under this Agreement or necessary to preserve or continue the same without interruption or discontinuity have been completed and are in full force and effect. The Railroad agrees that in no event will it permit or suffer any unit of the Equipment to be attached, affixed or annexed in any way to any real or personal property such that such unit might become a fixture or accession to such property under the laws of any jurisdiction in which such unit might be located from time to time. The Railroad may lease one or more of the units of the Equipment to the extent permitted under Article 15 hereof and on the conditions therein set forth.

ARTICLE 12. 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 or in the Equipment, or any unit thereof, equal or superior to the Vendor's interest 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 reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Upon the failure of the Railroad to pay or discharge any sum or sums required of it to be paid or discharged under the preceding sentence, the Vendor after ten (10) days' prior written notice to the Railroad may (but shall be under no obligation to do so) pay or discharge the same for the account of the Railroad and in the name of the Railroad or otherwise. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment, together with the reasonable expenses of the Vendor (including legal expenses) incurred in connection therewith shall be payable by the Railroad on demand and shall be secured by and under this Agreement. This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's mechanics' workmen's repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 13. Railroad's Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of the retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when said security interest remains in the Vendor, the transfer of said security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement or any failure on the part of the Railroad to comply with any provision of this Agreement. 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 14. Patent Indemnities; Warranties of Material and Workmanship. The Railroad agrees to 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 or any design, system, process, formula or combination which infringes or is claimed to infringe on any patent or other right. The Equipment Suppliers agree to and hereby do, to the extent legally possible, assign, set over and

deliver to the Railroad every claim, right and cause of action which the Equipment Suppliers have or hereafter shall have against the seller or sellers of any designs, systems, processes, formulae, combinations, articles or materials used 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 the operation thereof infringes or is claimed to infringe on any patent or other right. The Equipment Suppliers further agree 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 to effectuate more fully the assignment and delivery of every such claim, right and cause of action. The Equipment Suppliers will give notice to the Railroad of any claim known to the Equipment Suppliers from which liability may be charged against the Railroad 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 Equipment Suppliers' warranty of material and workmanship, and those of certain of its contractors and subcontractors, are set forth in Item 3 of Schedule 1 hereto. The Equipment Suppliers shall take all steps necessary to secure and preserve intact for the benefit of the Railroad and any assignee of the rights of the Equipment Suppliers under paragraph (b) of Article 15 hereof, as their interests may appear, all applicable patent and material and workmanship warranties on the part of the Equipment Suppliers' contractors and subcontractors relative to the Equipment.

ARTICLE 15. Assignments. (a) The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 11 hereof, transfer 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 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, provided such railroad company shall have capital and surplus aggregating at least that of the Railroad immediately prior to such acquisition. The Railroad may, with the prior written consent of the Vendor, which consent shall not be unreasonably withheld, lease one or more units of the Equipment to any other railroad company, provided, however, that (i) such lease shall provide that the rights of the lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement, (ii) such lessee shall expressly agree not to employ or permit the employment of any unit of the Equipment in service in any location other than those to which such unit may be removed at the time under Article 11 hereof, (iii) a copy of such lease shall be furnished to the Vendor, and (iv) if requested by the Vendor, the Railroad shall have furnished to the Vendor an opinion of counsel, in form

and substance satisfactory to the Vendor, to the effect that no further filings or recordings of this Agreement or any assignment hereof or any amendment or supplement hereto or thereto or any such lease, nor any other legal action, is necessary, in connection with such lease or otherwise, in order to protect the interest of the Vendor in the Equipment or the rights of the Vendor under this Agreement.

(b) 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, may be assigned by the Vendor and reassigned by the assignee at any time and from time to time. No such assignment shall subject the assignee to, or relieve the Equipment Suppliers from, any of the obligations of the Equipment Suppliers to cause the construction and delivery of the Equipment in accordance with this Agreement or to respond to their undertakings contained or referred to in Article 14 hereof or relieve the Railroad of any of its obligations to the Equipment Suppliers under Articles 2, 3, 4, 5, 13 and 14 hereof, Schedule 1 hereto and this Article 15 or of any other obligation which, according to its terms or context, is intended to survive an assignment.

(c) Upon any such assignment under paragraph (b) either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all 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 of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

(d) The Railroad recognizes that it is the custom of railroad equipment manufacturers or suppliers to assign conditional sales agreements and understands that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Railroad expressly represents, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder and for the purposes of inducing such acquisition, that in the event of such assignment by the Vendor as hereinabove 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 Equipment Suppliers or any of their contractors or subcontractors 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 indebt-

edness or liability at any time owing to the Railroad by the Equipment Suppliers. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Equipment Suppliers.

(e) The Railroad will (i) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at least five (5) business days prior to the Closing Date for the Group fixed in the notice by the Railroad, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (ii) furnish to such assignee such number of counterparts of any other certificate or document required by the Vendor as may reasonably be requested.

(f) In the event that on or prior to the Cut-Off Date this Agreement (i) shall not have been assigned by the Equipment Suppliers to an institutional investor under an agreement providing for payment by such investor of an amount equal to the Conditional Sale Indebtedness or to an agent acting for a group of banks or institutional investors under a finance agreement providing for deposit with the agent by the banks or institutional investors of any amount equal to the Conditional Sale Indebtedness, by an instrument of assignment providing for payment to the Equipment Suppliers of an amount equal to the Conditional Sale Indebtedness, or (ii) shall have been so assigned by the Equipment Suppliers and the assignee shall not make payment to the Equipment Suppliers with respect to units of its Equipment or any supplemental invoice as provided in the instrument making such assignment or such assignee shall not be obligated, pursuant to the terms of such instrument of assignment, to make such payment, the Equipment Suppliers will promptly notify the Railroad of such event and, if such amount shall not have been previously paid by such assignee, the Railroad will, not later than ninety (90) days after the date such payment was due and prior to the Cut-Off Date, pay or cause to be paid to the Equipment Suppliers the aggregate unpaid Purchase Price of such units of Equipment.

ARTICLE 16. 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 ten (10) days after payment thereof shall be due hereunder; or

(b) the Railroad shall, for more than thirty (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 and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been (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 thirty (30) days after such appointment, if any, or sixty (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 for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, 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 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 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 thirty (30) days after such appointment, if any, or sixty (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 shall make or suffer any unauthorized transfer of the right to possession of any unit or units of the

Equipment having an aggregate Purchase Price of less than 15% of the total Purchase Price of all of the units of the Equipment and such possession shall not have been reacquired thirty (30) days after the date of the transfer of such right to possession, or shall make or suffer any other unauthorized transfer of the right to possession of any unit or units of the Equipment having an aggregate Purchase Price of at least 15% of the total Purchase Price of all of the units 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 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 aggregate Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. 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 wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice or demand or the lapse of time, or both, 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 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 expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 17. Remedies. (a) At any time during the continuance of a Declaration of Default, the Vendor, upon such notice, if any, as may be required for compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, may take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 17 expressly provided, and may remove the same from possession and use of the 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 facilities or means of the Railroad, subject to all mandatory requirements of due process of law. During any such continuance the Vendor may collect and retain for its own use and benefit, free of any liability or accountability to the Railroad in respect of the same, all rentals under all leases made by the Railroad of any one or more units of the Equipment or may terminate any such lease.

(b) 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 manner cause (i) 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 (ii) 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 the 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 (except for losses or injuries resulting solely from the negligence of the Vendor), to permit inspection of the Equipment by the Vendor, the Vendor's representatives and prospective purchasers and users. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, 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.

(c) At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinabove in this Article 17 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 by telegram or registered mail, addressed as provided in Article 21 hereof, within thirty (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 thirty (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 thirty (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 objects in writing to the Vendor within thirty (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 17.

(d) At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the 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 or otherwise arranging for the sale of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

(e) 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, subject to compliance with any mandatory requirements of law. 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 (10) days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 21 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 forty (40) railroads 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 (10) 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 in compliance with any mandatory requirements of law, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 17), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all or any part of the sums due to the Vendor from the Railroad hereunder.

(f) 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 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 default therein.

(g) 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 as applicable to such period, on 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.

(h) 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.

(i) The foregoing provisions of this Article 17 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 18. Applicable State Laws. Any provision of this Agreement which is 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 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, to the fullest extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, including notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and all exemptions of property and any other requirements with respect to the enforcement of the Vendor's rights under this Agreement and any and all rights of redemption.

ARTICLE 19. Recording. 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 will further cause financing statements in respect of the Equipment, naming the Railroad as debtor, the Equipment Suppliers as secured parties and the agent referred to in paragraph (f) of Article 15, if any, as assignee to be filed in the offices of the Secretary of the Commonwealth of Pennsylvania and the Prothonotary of Philadelphia County, Pennsylvania and will further cause to be effected all such other recordings and filings and all such notations on certificates of title as may be required or advisable in all applicable jurisdictions in order to protect fully and perfect the interests of the Vendor hereunder; and the Railroad will from time to time at its sole expense do and perform any other act and will execute, acknowledge, deliver, file, register, deposit, publish and record any and all further instruments required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement, and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor. The Railroad represents and warrants to the Vendor that the principal place of business of the Railroad is located at the address set forth in clause (a) of Article 21 hereof and agrees that until the payment in full of the Conditional Sale Indebtedness and the full performance and discharge of all obligations and

liabilities of the Railroad hereunder such principal place of business shall not be relocated. The Railroad further represents and warrants to the Vendor that the Equipment and each and every unit thereof are equipment of a type which is normally used in more than one jurisdiction.

ARTICLE 20. Payment of Expenses. The Railroad will pay all reasonable costs and expenses 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 Messrs. Morgan, Lewis & Bockius, special counsel for the first assignee of this Agreement and the parties acquiring interests in such first assignment.

ARTICLE 21. 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 the following specified addresses:

(a) to the Railroad, at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, Attention of Assistant Treasurer - Cash Mobilization,

(b) to the Equipment Suppliers at Six Penn Center Plaza, Philadelphia, Pennsylvania 19104, and

(c) 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 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 22. Article Headings, Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement. This Agreement, including the 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 23. Law Governing. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the Commonwealth of Pennsylvania; provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act, to the extent any of the Equipment may constitute rolling stock for purposes of such Section, and Section 86 of the Railway Act of Canada and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 24. Concerning the Equipment Suppliers. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and every representation, undertaking and agreement herein made on the part of the Equipment Suppliers, including without limitation those made in Article 15 hereof, are each and every one of them made and intended not as personal representations, undertakings and agreements by the Equipment Suppliers, or either of them, or for the purpose or with the intention of binding them or either of them personally, but are made and intended for the purpose of binding only the right, title and interest of the Equipment Suppliers, and each of them, in, to and under the Equipment, and each and every unit thereof, this Agreement, the Purchase Orders and the instruments of assignments (the "Purchase Order Assignments") whereby the Purchase Orders were heretofore assigned by the Railroad to the Equipment Suppliers, and that no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against the Equipment Suppliers, or either of them, for or on account of any representation, undertaking or agreement of them or either of them, whether expressed or implied, all such personal liability and personal responsibility, if any, being expressly waived and released by the Railroad and by all persons claiming by, through or under the Railroad or the Equipment Suppliers, or any of them, provided, however, that the Railroad and any person claiming by through or under the Railroad or the Equipment Suppliers, making claim hereunder, may look to the Equipment, this Agreement, the Purchase Orders and the Purchase Order Assignments for satisfaction of all such claims. In no event shall recourse be had in respect of any obligation due under this Agreement, or referred to herein, against the personal estates of the Equipment Suppliers, or either of them, or against any incorporator, stockholder, director or officer, past, present or future, of the Railroad, whether by virtue of any enforcement of any assessment or penalty or otherwise, all of which liability, whether at common

law, in equity, by any constitutional provision, statute or otherwise, of such Equipment Suppliers and such incorporators, stockholders, directors or officers of the Railroad is hereby forever released as a condition of and as consideration for the execution and delivery of this Agreement. In order to facilitate the consummation of the transactions contemplated by this Agreement, each of the Equipment Suppliers hereby irrevocably appoints the other its true and lawful attorney-in-fact with full power and authority to execute, acknowledge and deliver, in the name and on behalf of the appointing Equipment Supplier or otherwise, any instrument or document necessary or advisable in order to perform the obligations of the Equipment Suppliers under and to consummate the transactions contemplated by this Agreement, and each of the Equipment Suppliers agrees that the foregoing appointments and authorizations, being powers coupled with interests, shall be irrevocable throughout the term of this Agreement and until the Conditional Sale Indebtedness has been paid in full and all rights and liabilities of the respective parties hereunder have been fully discharged.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts, taken together, shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. 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 acknowledgements hereto annexed.

IN WITNESS WHEREOF, the parties hereto, one pursuant to due corporate authority, have signed this instrument or have caused this instrument to be executed and their respective seals to be hereunto affixed, duly attested, all as of the date first above written.

In the presence of:

Patricia C. Cottrell

James J. Callahan L.S.  
James J. Callahan

H. Williams Brady

Robert M. Haber L.S.  
Robert M. Haber

Attest:

W. Wallace

CONSOLIDATED RAIL CORPORATION

By Richard T. [Signature]  
Vice President and Treasurer

ASSISTANT SECRETARY

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF PHILADELPHIA )

On this 26<sup>th</sup> day of September, 1977, before me personally appeared James J. Callahan and Robert M. Haber to me known and known to me to be the individuals named in and who executed the foregoing instrument and they acknowledged to me that they executed the same as and for the uses and purposes intended.

Charles E. Casch Jr.  
Notary Public

[Notarial Seal]

My Commission expires

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS.:  
COUNTY OF PHILADELPHIA )

On this 26<sup>th</sup> day of September, 1977 before me personally appeared Richard T. Fox, to me personally known, who being by me duly sworn says that he is the Vice President and Treasurer of CONSOLIDATED RAIL CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed in 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.

Charles E. Casch Jr.  
Notary Public

[Notarial Seal]

My Commission expires

SCHEDULE 1 TO CONDITIONAL SALE AGREEMENT

Item 1:

<u>Type of Equipment</u>	<u>Numbers</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Bolting Machines	NC 1348 to NC 1447	100	\$ 4,906	\$ 490,600
Cross Slotters	GX 1246 to GX 1295	50	1,985	99,250
Field Welding Kits	WF 1006 to WF 1018	13	2,468	32,084
Field Welding Kits	WF 1019 to WF 1030	12	884	10,608
Yard Cleaner	BT 2313	1	138,558	138,558
Wheel Barrow Grinders	GP 7201 to GP 7325	125	2,860	357,500
Scrap Loaders	PR 4019 to PR 4022	4	25,570	102,280
Tie Preservative Sprayers	TJ 1014 to TJ 1017	4	3,325	13,300
Stock Rail Grinders	GP 1701 to GP 1750	50	2,540	127,000
16 Tool Tampers	MP 7017 to MP 7036	20	35,762	715,240
Tamper, High Speed Production	ME 5024 to ME 5047	24	124,262	2,982,288
Ballast Regulators	BR 1246 to BR 1275	30	47,910	1,437,300
Anchor Cribbers	BE 1134 to BE 1139	6	13,750	82,500
Ballast Cribbers (Brush)	BE 1036 to BE 1041	6	7,451	44,706
Rail Gaugers	RX 1014 to RX 1015	2	26,980	53,960
Dual Tie Borers	TY 2208 to TY 2212	5	5,900	29,500
* Rotary Dump Truck	ET 2001 to ET 2003	3	42,360	127,080
* 400 AMP Trailer Mounter Welders	WE 4050 to WE 4059	10	4,570	45,700
400 AMP Submerged Arc	WE 4060	1	2,479	2,479
Electric Generators, Portable 3,000 watt	LG 3002 to LG 3016	15	347	5,205

<u>Type of Equipment</u>	<u>Numbers</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Scarifier Inserters	TB 1430 to TB 1446	17	\$ 35,745	\$ 607,665
Ballast Crib Removers	BC 1002 to BC 1005	4	81,500	326,000
Hydraulic Spike Pullers	SF 3301 to SF 3324	24	3,990	95,760
Two Man Spiker with Automatic Feed	SM 1281 to SM 1284	4	47,770	191,080
Tie Adzers	TZ 1057 to TZ 1060	4	15,750	63,000
Rail Heaters	RE 1016 to RE 1021	6	14,800	88,800
Snow Blower	SL 3025	1	73,488	73,488
Crawler Cranes	CC 1027 to CC 1030 CC 1032 to CC 1037	10	65,696	656,960
On Track Cranes	CB 4157 to CB 4160	4	167,380	669,520
Rail Lifters	TK 2066 to TK 2075	10	4,432	44,320
Tie Borers	TY 1306 to TY 1328	23	2,262	52,026
Tie Plug Inserters	TD 2043 to TD 2053	11	8,905	97,955
Spike Distributing Cars	SC 1013 to SC 1015	3	13,720	41,160
Rail Anchor Distributing Cart	RA 1109	1	13,735	13,735
Tie Removers	TE 3001 to TE 3008	8	43,845	350,760
* Rough Terrain Crane	CH 1516	1	98,345	98,345
Air Compressor - 185 cfm.	AT 1916 to AT 1931	16	4,407	70,512
Push Trucks, Portable	PL 0201 to PL 0300	100	344	34,400
Push Trucks	PL 1150 to PL 1199	50	718	35,900

<u>Type of Equipment</u>	<u>Numbers</u>	<u>Quantity</u>	<u>Unit Cost</u>	<u>Total Cost</u>
Push Trucks	PL 4284 to PL 4301	18	\$ 3,235	\$ 58,230
*Excavators High Rail	EG 3001 to EG 3003	3	108,366	325,098
Electric Generators, Portable 5,000 watt	LG 5501 to LG 5509	9	713	6,417
Hydraulic Rail Pullers	RP 1024 to RP 1070	47	4,300	202,100
Locomotive Crane	CL 3035	1	230,414	230,414
[Additional equipment hereafter to be specified by the Railroad in the manner provided in para- graph (b) of Article 2 of the Conditional Sale Agreement and having an aggregate total cost of \$704,931]				<u>704,931</u> <u>\$12,035,714</u>

\*Indicates an item which is to be the subject of a certificate of title.

Item 2: The "Specifications" referred to in Article 2 of the Conditional Sale Agreement are identified in the respective Purchase Orders referred to in such Agreement, copies of which Purchase Orders and Specifications have been exchanged after having been initialed by duly authorized representatives of the parties.

Item 3: The Equipment Suppliers warrant that the Equipment is of the kind and quality described in, and will be built in accordance with, the Specifications referred to in Article 2 of the Conditional Sale Agreement to which this Schedule 1 is attached (hereinafter in this Schedule 1 called the Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment to be free from defects in material and workmanship which may develop under normal use and service within one year from date of delivery of such unit.

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

The Equipment Suppliers further agree that neither the inspection as provided in Article 3 of the 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 of any rights under this Item 3.

The provisions of this Item 3 are subject in all respects to the provisions of Article 24 of the Agreement.