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September 1, 1981

RECORDATION NO. 7072-A Filed 1425

SEP 1 1981 - 10 00 AM

INTERSTATE COMMERCE COMMISSION

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

Dear Mrs. Mergenovich:

On June 14, 1973 at 2:50 P.M., there was filed and recorded with the Interstate Commerce Commission a railroad Equipment Lease dated as of May 7, 1973 ("Equipment Agreement"), between United States Railway Leasing Company, as Lessor, and Illinois Terminal Railroad Company, as Lessee. The Equipment Agreement was assigned recordation number 7072.

In accordance with 49 U.S.C. § 11303 and Part 1116 of the Commission's rules, I now enclose for recordation three (3) counterparts of an Assignment and Assumption Agreement dated as of September 1, 1981, which supplements and evidences the assignment of rights under the aforementioned Equipment Agreement. The enclosed counterparts cover the same equipment covered by the Equipment Agreement, and have been properly executed by the following parties:

ASSIGNOR: Illinois Terminal Railroad Company
710 North Twelfth Boulevard
St. Louis, Missouri 63177

ASSIGNEE: Norfolk and Western Railway Company
8 North Jefferson Street
Roanoke, Virginia 24042

There is also enclosed a voucher in the amount of $10.00 to cover the recordation fee.

A general description of equipment covered by the Equipment Agreement and the Assignment and Assumption Agreement is as follows:

| Number of Units | Description | AAR Designation | Road Numbers |
|---|---|---|---|
| 4 | 52'5" Insulated Boxcars | RBL | ITC 913-916 |

After the enclosed Assignment and Assumption Agreement has been duly recorded, please return two of the original counterparts, stamped with the ICC recordation data, to our representative who delivered these documents to you.

Sincerely,

w/
Enclosures

c: J. Jones
D. E. Middleton
R. R. McDaniel
J. T. Valleroy

ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 1, 1973 ("This Assignment"), by and between CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, not in its individual capacity but solely as Trustee under a Trust Agreement dated as of January 31, 1973 (the "Lessor") and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO as Assignee under an Agreement and Assignment dated as of June 1, 1973, between General Motors Corporation (Electro-Motive Division) (the "Builder") and Continental Illinois National Bank and Trust Company of Chicago (hereinafter, in its individual capacity as such assignee, being called the "Vendor").

WHEREAS, National Railroad Passenger Corporation (the "Vendee") has entered into a Conditional Sale Agreement dated as of June 1, 1973 (the "Security Document"), with the Builder providing for the sale to the Vendee of the locomotives (the "Units") described in Schedule A thereto as are delivered to and accepted by the Vendee thereunder; and

WHEREAS, the Lessor and the Vendee have entered into an Equipment Lease dated as of June 1, 1973 (the "Lease" and the Vendee in its capacity as lessee thereunder being hereinafter called the "Lessee"), providing for the leasing by the Lessor to the Lessee of the Units; and

7073

RECORDATION NO._____ Filed & Recorded

JUN 20 1973 -2 30 PM

INTERSTATE COMMERCE COMMISSION

WHEREAS, the Lessor has agreed to assume the obligations of the Vendee under the Security Document pursuant to a Sale and Lease Back Agreement dated as of June 1, 1973 between the Lessor and the Vendee; and

WHEREAS, in order to provide security for the obligations of the Lessor under the Security Document and as an inducement to the Vendor to invest in the Conditional Sale Indebtedness (as that term is defined in the Security Document), the Lessor has agreed to assign for security purposes its rights in, to and under the Lease to the Vendor;

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

1. Subject to the provisions of Paragraph 9 hereof, the Lessor hereby assigns, transfers and sets over unto the Vendor, as collateral security for the payment and performance of the Lessor's obligations under the Security Document, all the Lessor's right, title and interest, powers, privileges, and other benefits under the Lease, including, without limitation, the immediate right to receive and collect all rentals, profits and other sums payable to or receivable by the Lessor from the

Lessee under or pursuant to the provisions of the Lease whether as rent, casualty payment, indemnity, liquidated damages, or otherwise, except for any amounts which may be payable to the Lessor pursuant to Sections 6, 10.2 or 16.2 of the Lease (such moneys being hereinafter called the Payments), and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an event of default specified in the Lease, and to do any and all other things whatsoever which the Lessor is or may become entitled to do under the Lease. In furtherance of the foregoing assignment, the Lessor hereby irrevocably authorizes and empowers the Vendor in its own name, or the name of its nominee, or in the name of the Lessor or as its attorney, to ask, demand, sue for, collect and receive any and all sums to which the Lessor is or may become entitled under the Lease, and to enforce compliance by the Lessee with all the terms and provisions thereof.

2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Vendor to, or transfer, or pass, or in any way affect or modify the liability of the Lessor under the Lease, it being understood and agreed that notwithstanding this Assignment or any subsequent assignment, all obligations of the Lessor to the

Lessee shall be and remain enforceable by the Lessee, its successors and assigns, against, and only against, the Lessor or persons other than the Vendor.

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

4. Upon the full discharge and satisfaction of all the Lessor's obligations under the Security Document, this Assignment and all rights herein assigned to the Vendor shall terminate, and all estate, right, title and interest of the Vendor in and to the Lease shall revert to the Lessor.

5. If an event of default under the Security Document shall occur and be continuing, the Vendor may apply all Payments against

the amounts due and payable under the Security Document and may otherwise enforce all of the rights and remedies of the Lessor under the Lease and apply all proceeds from such exercise against the amounts due and payable under the Security Document.

6. The Lessor will, from time to time, do and perform any other act and will execute, acknowledge, deliver and file, register, deposit and record (and will refile, reregister, rerecord or redeposit whenever required) any and all further instruments required by law or reasonably requested by the Vendor in order to confirm or further assure, the interests of the Vendor hereunder.

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

8. This Assignment shall be governed by the laws of the State of Illinois, but the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

9. The Vendor hereby agrees with the Lessor that the Vendor will not, so long as no event of default under the Lease or an event of default under the Security Document has occurred and is then continuing, exercise or enforce, or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Lessor to the Vendor by this Assignment.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by officers thereunto duly authorized, and their respective corporate seals to be affixed and duly attested, all as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO
as Trustee

[CORPORATE SEAL]

Attest: _____
Trust Officer

By _____
Second Vice President

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

[CORPORATE SEAL]

Attest: _____
Commercial Banking Officer

By _____
Vice President

STATE OF ILLINOIS )
) ss.:
COUNTY OF C O O K )

On this 12 day of June, 1973, before me personally appeared V. EDWARD KUHL, to me personally known, who, being by me duly sworn, says that he is a Second Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instument was the free act and deed of said corporation.

J. J. Powell
J. J. POWELL
Notary Public

[NOTARIAL SEAL]

My Commission expires: April 26, 1976

STATE OF ILLINOIS )
) ss.:
COUNTY OF C O O K )

On this 12 day of June, 1973, before me personally appeared Peter D. Horne, to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

J. J. Powell
J. J. POWELL
Notary Public

[NOTARIAL SEAL]

My Commission expires April 26, 1976

ACKNOWLEDGEMENT OF NOTICE OF ASSIGNMENT

Receipt of a copy of, and due notice of the assignment made by, the foregoing Assignment of Lease and Agreement is hereby acknowledged as of June 1, 1973.

NATIONAL RAILROAD PASSENGER CORPORATION

By Robert C. Moot
Vice President

Exhibits A and D

# CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1973

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

NATIONAL RAILROAD PASSENGER CORPORATION

---

# AGREEMENT AND ASSIGNMENT

Dated as of June 1, 1973

between

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

and

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO

---

Guaranty by Department of Transportation

---

40 Locomotives

R. R. DONNELLEY & SONS COMPANY, CHICAGO

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## ATTACHMENTS


Exhibit 1—Certificate of Acceptance

Schedule A—Description of Equipment

Schedule B—Builder's Warranty

**CONDITIONAL SALE AGREEMENT** dated as of June 1, 1973, between GENERAL MOTORS CORPORATION (Electro-Motive Division), a Delaware corporation (hereinafter called the Builder or Vendor, as more particularly set forth in Article 22 hereof), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act of 1970, as amended, and the laws of the District of Columbia (hereinafter called the Railroad).

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

WHEREAS the Railroad has agreed pursuant to the terms of a Sale and Lease Back Agreement (hereinafter called the Sale and Lease Back Agreement) dated as of June 1, 1973 between the Railroad and the Trustee, hereinafter referred to, to sell, subsequent to its purchase hereunder and as permitted by Article 14 hereof, all of its right, title and interest as the owner of the Equipment and under this Agreement to Continental Illinois National Bank and Trust Company of Chicago, as Trustee (hereinafter called the Trustee) under a Trust Agreement dated as of January 31, 1973 and to lease the Equipment back from the Trustee pursuant to the terms of an Equipment Lease (hereinafter called the Lease) dated as of June 1, 1973 between the Railroad and the Trustee;

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

ARTICLE 1. *Construction and Sale.* Pursuant to this Agreement, the Builder shall construct the Equipment at its plant in McCook, Illinois, 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 referred to in Schedule A 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 completion of manufacture of each thereof, 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 railroad equipment of the character of such units of the Equipment, and each unit of the Equipment will be new railroad equipment.

ARTICLE 2. *Inspection and Delivery.* The Builder will deliver the units of the Equipment to the Railroad at the place specified in Schedule A hereto, in accordance with the delivery schedule set forth in Schedule A hereto; *provided, however,* that the Builder shall have no obligation to deliver any unit of the Equipment hereunder at any time after any event of default (as described in Article 15 hereof), or event which with the lapse of time and/or demand could constitute such an event of default, shall have occurred.

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

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before September 30, 1973 shall be excluded herefrom. If any Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Equipment not so excluded herefrom. If the Builder's failure to deliver 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 Equipment and pay the full purchase

price therefor, determined as provided in this Agreement, if and when such Equipment shall be completed and delivered by the Builder, 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 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 the standard quality control practices of the Builder. Upon completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector of the 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 in the form of Exhibit 1 hereto (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 6 hereof; *provided, however,* that the Builder shall not thereby be relieved of its warranty referred to in Schedule B hereto, which is hereby incorporated by reference.

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; *provided, however,* that the Builder shall not thereby be relieved of its warranty referred to in Schedule B hereto.

ARTICLE 3. *Purchase Price and Payment.* The base price or prices per unit of the Equipment, exclusive of interest, are set forth in Schedule A hereto. The base price or prices, which shall exclude freight charges, if any, from the Builder's plant to the point of delivery, are 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.

The Equipment shall be settled for in such number of groups of the Equipment delivered to and accepted by the Railroad as may be agreed upon by the parties hereto (each such group being hereinafter called a Group).

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 each Closing Date (as hereinafter defined) with respect to a Group (i) an amount equal to $122,165.72 for each unit in such Group, plus (ii) the amount by which (x) the Purchase Price of all units of the Equipment covered by this Agreement for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being hereinafter called the Invoiced Purchase Prices), exceeds (y) the sum of $12,900,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

(b) in 55 consecutive quarterly instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The instalments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for such Equipment being herein called the Conditional Sale Indebtedness) shall be payable on each January 1, April 1, July 1 and October 1, commencing April 1, 1974, to and including October 1, 1987 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The

unpaid balance of the Conditional Sale Indebtedness shall bear interest (i) from and including the Closing Date in respect of which such indebtedness was incurred to the date (hereinafter called the "Assignment Date") on which the long-term institutional lenders (as defined in the Lease) acquire the interest of the Vendor hereunder pursuant to Section 25.1(c) of the Lease, at a rate per annum equal to 1⅛% in excess of the prime interest rate of Continental Illinois National Bank and Trust Company of Chicago (being the best rate of interest charged by Continental Illinois National Bank and Trust Company of Chicago to its prime large commercial customers on short-term unsecured borrowings) from time to time in effect, and (ii) from and including the Assignment Date at the rate of 7⅝% per annum. Interest accrued to the Assignment Date shall be payable on the Assignment Date and interest accruing on and after the Assignment Date shall be payable on January 1, 1974 and on each Payment Date thereafter. The principal amount of Conditional Sale Indebtedness payable on each Payment Date shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 55 instalments of principal will completely amortize the Conditional Sale Indebtedness.

The term "Closing Date" with respect to any Group shall mean such date (on or prior to September 30, 1973), not more than ten business days following presentation by the Builder to the Railroad of the invoice or invoices and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least three business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Chicago, Illinois are authorized to remain closed.

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 8% 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 7 hereof, or upon the purchase from the Trustee of any units of the Equipment by the Railroad under Section 25 of the Lease, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

ARTICLE 4. *Taxes.* The Railroad agrees to pay and discharge (and does hereby agree to indemnify and hold the Vendor harmless from and against) all sales, use, personal property, excise, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon, unless resulting from the Vendor's action or failure to act) imposed against the Railroad, the Vendor or the Equipment by any Federal, state or local governmental taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or transfer of title to the Railroad under the terms hereof, or upon the rentals or receipts arising therefrom or the payments made hereunder (excluding, however, Federal, state and local taxes on, or measured by, the net income of the Vendor); provided, however, that the Railroad shall not be required to pay or discharge any such tax, levy, impost, duty, charge or withholding so long as it shall, in good faith and by appropriate administrative or legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Vendor to the Equipment, and the Railroad shall reimburse the Vendor for any damages or expenses resulting from such failure to pay or discharge. The Railroad agrees to assist the Vendor in the preparation, and when possible to file, on behalf of the Vendor, all required tax returns and reports relating to taxes for which the Railroad is responsible under this Article 4. The Vendor shall keep the Railroad informed of any claim made against the Vendor for the payment of any such tax, levy, impost, duty, charge or withholding. The obligations of the Railroad contained in this Article 4 shall continue in full

force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

ARTICLE 5. *Title to the Equipment.* The Vendor shall and hereby does retain security 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 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, subject, however, to the provisions of Article 8 hereof.

Except as otherwise specifically provided in Article 7 hereof, when and only 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 security 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 19 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Vendor pursuant to Article 7 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 6. *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 A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Owned by a Secured Party under a Security Agreement 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 reasonably be requested by the Vendor to protect the Vendor's security 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 the 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 immediately preceding 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 names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 7. *Casualty Occurrences and other Prepayment.* In the event that any unit of the Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Railroad, irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise (any such occurrence, except for any requisition which does not exceed the final maturity date of the Conditional Sale Indebtedness in respect of such unit, being hereinafter called a Casualty Occurrence) prior to the payment of the full Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, the Railroad shall, promptly after it shall have determined that such unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in writing in regard thereto. When the aggregate Casualty Value (as hereinafter defined in this Article 7) of units of Equipment described in any notice given under this Article 7 as having suffered a Casualty Occurrence (exclusive of units of Equipment described in any such notice as having suffered a Casualty Occurrence with respect to which a payment shall have been made to the Vendor pursuant to this Article 7) shall exceed $1,000,000, the Railroad, on the next succeeding Payment Date, shall pay to the Vendor a sum equal to the Casualty Value of such unit or units of Equipment as of the date of such payment; provided that, notwithstanding the foregoing, the Railroad shall, on April 1 of each year, pay to the Vendor a sum equal to the Casualty Value of any unit or units of Equipment which have suffered a Casualty Occurrence during the preceding year or any prior year for which no payment has previously been made to the Vendor pursuant to this Article 7. At the time of each payment of Casualty Value hereunder, the Railroad shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of the units covered thereby. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Railroad will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the aggregate of the principal and interest payable on each remaining Payment Date shall be substantially equal and the remaining principal payments will completely amortize the Conditional Sale Indebtedness.

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

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 7 with respect to any other unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Equipment.

ARTICLE 8. *Maintenance; Compliance with Laws and Rules.* The Railroad shall use or cause the use of the Equipment only in the United States and only in the manner for which it was designed and intended. The Railroad shall, at its own cost and expense, maintain and keep the Equipment in good order, condition and repair, ordinary wear and tear excepted, and in accordance with standards generally prevailing in the railroad industry, including making all replacements required to maintain the Equipment in good running order. Any parts installed or replacements made by the Railroad upon any unit of Equipment shall be considered accessions to such unit of Equipment and title thereto shall be immediately vested in the Vendor as provided in Article 5 hereof, without cost or expense to the Vendor, provided that the Railroad shall be entitled to remove any such accession so long as such removal is

not inconsistent with the Railroad's obligations set forth in this Article 8. The Railroad agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules (including the rules of the Department of Transportation) with respect to the use, maintenance and operation of each unit of Equipment. In case any equipment or appliance on any such unit of Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such unit of Equipment in order to comply with such laws, regulations, requirements and rules, the Railroad agrees to make such changes, additions and replacements, at its own cost.

ARTICLE 9. *Reports and Inspection Rights.* On or before April 1 in each year, commencing with the year 1974, the Railroad shall furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the units of Equipment covered hereby, the amount, description and numbers of all units of Equipment that may have suffered a Casualty Occurrence during the preceding calendar year (or, in the case of the first such statement, for the portion thereof commencing with the date of this Agreement), and such other information regarding the condition or repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all Equipment repainted during the period covered by such statement, the markings required by Article 6 hereof shall have been preserved or replaced. The Vendor shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Vendor the existence and proper maintenance thereof during the continuance of this Agreement. The foregoing right of inspection shall be subject, however, to such terms and conditions of access as may be imposed by any railroad, terminal company or other entity upon the property of which the Equipment is situate at the time of any such inspection. Vendor agrees to indemnify and hold harmless the Railroad, its affiliates, directors, officers, agents, employees, servants and contractors from and against any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner (whether arising from personal injury, property damage or otherwise) which is in any way, directly or indirectly, attributable to the exercise of such right of inspection.

ARTICLE 10. *Use and Possession.* So long as the Railroad shall not be in default hereunder, the Railroad shall be entitled to the possession and use of the Equipment (by itself or by others on its behalf) in accordance with the terms hereof upon the rail lines of railroads (including, without limitation, the rail lines of terminal companies) over which the Railroad conducts, or has conducted for it, rail passenger service.

ARTICLE 11. *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 thereof, equal or superior to the Vendor's security title thereto or property therein, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate administrative or legal proceedings in any reasonable manner 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. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

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

ARTICLE 12. *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 retention by the Vendor of security title to the Equipment, the use and operation thereof by the Railroad during the period when security title thereto remains in the Vendor or the transfer of security title to the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the conveyance of security title to, the Equipment, as provided in Article 5 hereof, or the termination of this Agreement in any manner whatsoever.

ARTICLE 13. *Patent Indemnities; Builder's Warranty of Material and Workmanship.* All agreements in respect of patent indemnities and warranties of material and workmanship are set forth in the Specifications and in Schedule B hereto and are hereby incorporated by reference.

ARTICLE 14. *Assignments.* The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 10 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 (1) 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 of the property 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, or (2) the Trustee pursuant to the Sale and Lease Back Agreement, shall not be deemed a breach of this covenant; *provided, however,* that the Railroad shall not be released from any of its obligations hereunder and the obligations assumed by the Trustee may be limited as provided in the Sale and Lease Back Agreement.

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 any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and agreements contained or referred to in Article 13 hereof, or relieve the Railroad of any of its obligations to the Builder under Articles 1, 2, 3, 4, 12, 13 and 14 hereof or of any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all 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.

The Railroad recognizes that it is the custom of railroad equipment manufacturers to assign conditional sale 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 purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided, the rights of such assignee to the entire unpaid indebtedness in respect of the Purchase Price or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, 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, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

In the event of any such assignment or successive assignments by the Vendor, the Railroad will, if necessary upon request of the assignee, change the markings on each side of each unit of the Equipment so as to be consistent with the interests of the assignee in the Equipment. The cost of such markings in the event of an assignment of not less than all the Equipment at the time covered by this Agreement shall be borne by the Railroad and, in the event of an assignment of less than all such Equipment, such cost shall be borne by such assignee.

The Railroad will (a) in connection with each settlement for the Equipment subsequent to such assignment, deliver to the assignee, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of 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 with respect to units of the Equipment as provided in the instrument making such assignment, the Builder 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 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, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect on the date such payment was due.

ARTICLE 15. *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 15 days after payment thereof shall be due hereunder; or

(b) Any obligation of the Railroad for borrowed money becomes or is declared to be due and payable prior to its express maturity by reason of default by the Railroad in the performance or observation of any obligation or condition and the continuance of such default for a period of 10 days, provided that if such default is thereafter cured, the default under this clause (b) shall also be deemed to be cured; or

(c) the Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, 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

(d) a petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (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

(e) any other proceeding 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 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 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

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

(g) The Government Guaranty (as defined in the Lease) shall, for any reason, cease to be in full force and effect;

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 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 3 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 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 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 16. *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 thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 16 expressly provided, and may remove the same from possession and use of the 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.

In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon railroad tracks as to which the Railroad then has a con-

tractual right of access, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points upon such railroad tracks as shall be designated by the Vendor and shall there make available the Equipment or cause it to be made available to the Vendor. At the option of the Vendor, the Vendor may for a period not exceeding 90 days keep the Equipment on any of the premises of the Railroad or upon railroad tracks as to which the Railroad then has a contractual right of access until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and 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 16 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 19 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, 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 16.

At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the 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 New York, New York, at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. 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 19 hereof. If such sale shall be a private sale, 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. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

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

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, and, 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 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 17. *Applicable State Laws.* Any provision of this Agreement prohibited by 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 full extent permitted by law, hereby waives all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any 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 18. *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 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 reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement; and the Railroad will promptly furnish to the Vendor certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Vendor.

ARTICLE 19. *Notice.* Any notice hereunder to any party designated below shall be deemed to be properly served if delivered to it at its address below:

(a) to the Railroad, at 955 L'Enfant Plaza North, S.W., Washington, D. C. 20024, attention: Secretary,

(b) to the Builder, at LaGrange, Illinois 60525,

(c) to any assignee of the Vendor or of the Railroad, at such address as may have been furnished in writing to the Railroad or the Vendor, as the case may be, 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 20. *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 (and the Specifications identified in Schedule A 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 21. *Law Governing.* The Railroad warrants that its chief place of business and its chief executive office are located in the District of Columbia. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 22. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Motors Corporation (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and business, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor as regards any rights hereunder that are retained or excluded from any assignment; and the term "Builder", whenever used in this Agreement, means, both before and after any such assignment, General Motors Corporation (Electro-Motive Division) and any successor or successors for the time being to its manufacturing properties and business.

ARTICLE 23. *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 together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

CONDITIONAL SALE AGREEMENT ADDENDUM

The parties agree that before any amendment or modification (other than to the Specifications) of this Agreement, or any assignment or transfer of the interest of the Builder hereunder (other than to the Assignee named in the Agreement and Assignment of even date herewith, and other than to insurance companies, commercial and savings banks and financing corporations of recognized standing organized under the laws of the United States or of any state thereof) or any assignment or transfer of the interest of the Railroad hereunder (other than to the Trustee pursuant to the Sale and Lease Back Agreement), becomes effective, the Federal Railroad Administrator must approve the same in writing. In consideration of his guarantee of National Railroad Passenger Corporation's financial obligations under this Agreement, the Federal Railroad Administrator shall have the right to enforce this provision irrespective of any other provision of this Agreement.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

(Corporate Seal)

By_____
Vice President

Attest:

_____
Assistant Secretary

NATIONAL RAILROAD PASSENGER CORPORATION

(Corporate Seal)

By_____
Vice President

Attest:

_____
Secretary

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By_____
*Vice President*

[CORPORATE SEAL]

Attest:

_____
*Assistant Secretary*

NATIONAL RAILROAD PASSENGER CORPORATION

By_____
*Vice President*

[CORPORATE SEAL]

Attest:

_____
*Secretary*

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this day of June, 1973, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Notary Public*

[NOTARIAL SEAL]

My Commission Expires:

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss.:

On this day of June, 1973, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of NATIONAL RAILROAD PASSENGER 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 on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Notary Public*

[NOTARIAL SEAL]

My Commission Expires:

## EXHIBIT 1

## CERTIFICATE OF ACCEPTANCE

To: General Motors Corporation (Electro-Motive Division), and Continental Illinois National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated as of January 31, 1973

I, duly appointed inspector and authorized representative of National Railroad Passenger Corporation ("Railroad"), for the purpose of the Conditional Sale Agreement, dated as of June 1, 1973 between General Motors Corporation (Electro-Motive Division) and the Railroad, and the Equipment Lease, dated as of June 1, 1973 between Continental Illinois National Bank and Trust Company of Chicago, Trustee under the Trust Agreement dated as of January 31, 1973, as Lessor, and the Railroad, as Lessee, do hereby certify that I have inspected, received, approved and accepted delivery of, on behalf of the Railroad under the Conditional Sale Agreement and (subject to delivery by the Railroad to said Lessor of a bill of sale therefor) the Equipment Lease, the following units of Equipment:

Manufacturer

Type of Equipment

Place Accepted

Date Accepted

Number of Units

Numbered

I do further certify, for the foregoing purpose, that the foregoing Equipment is in good order and condition, and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications and that each locomotive included therein has been marked in accordance with Article 6 of the Conditional Sale Agreement and Section 4.2 of the Equipment Lease.

The execution of this certificate will in no way relieve or decrease the responsibility of the manufacturers of the Equipment for any warranties they have made with respect to the Equipment or for any other obligations which they now or may hereafter have to the Railroad.

Dated: , 1973.

_____

Inspector and Authorized
Representative of
National Railroad Passenger Corporation

## SCHEDULE A

## DESCRIPTION OF EQUIPMENT†

| Type | Quantity | Specifications | Place of Delivery | R.R. Nos. | Unit Price* | Total Price* | Delivery |
|---|---|---|---|---|---|---|---|
| 3,000 H.P. Diesel Electric Locomotives Model SDP40F | 40 | Builder's No. 8093 dated November 1, 1972 as amended by specification supplements (contained in Railroad's Request for Quotation X-JKL-258-1 dated September 14, 1972 and Purchase Order WKL-307-001 dated November 2, 1972 and supplements 1, 2, 3 and 6 thereto) | Chicago, Illinois | 500-539 (both inclusive) | $444,665.72 | $17,786,628.80 | Approximately one Locomotive a day, with final delivery on or prior to July 31, 1973 |

*Not including fuel and freight.

†The term "Unit of Equipment" as used in this Conditional Sale Agreement shall mean a locomotive described above, including the radio and signal equipment installed therein.

## SCHEDULE B

**Item 1.** (a) **General.** The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Article 1 of the Conditional Sale Agreement to which this Schedule B is attached (hereinafter in this Schedule B called the Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each unit of the Equipment against any defects or any failures caused by faulty or inadequate design, poor workmanship or poor material for a period of two years from date of Railroad's acceptance of each unit of Equipment, or 350,000 miles, whichever comes first. In addition the carbody, wiring and trucks shall be covered by extended warranty for ten years. Any part or parts thereof that prove inadequate, insufficient or defective either in design, material or workmanship during the period of guarantee shall be replaced by the Builder without expense to the Railroad at the shops designated by the Railroad. The above shall apply to any modifications made to any unit of Equipment whether they are due to defective material or workmanship or to other inadequacies in such unit.

Where a failure of 25% of a guaranteed item occurs within the guarantee period, the remaining items shall receive repairs or adjustments under the guarantee, including those that have passed beyond the guarantee period before that failure was recognized.

The period of guarantee on a spare part shall commence upon delivery of such spare part to the Railroad and shall terminate upon the earlier of (a) the date which is two years after such spare part is first put in service by Railroad or (b) the date which is four years after the delivery of such spare part to the Railroad.

Equipment reliability must be such to insure 90% daily availability (method of calculation to be by mutual agreement between Railroad and Builder) of the Equipment exclusive of out of service time (commencing when the unit of Equipment is delivered to the shop or engine house designated by Builder to make the necessary repairs) as a result of derailment, collision or act of God and not exceeding 24 hours in any 30-day period for periodic maintenance as required by law. Railroad will be responsible to insure that repair time is consistent with such shop's established practice and adjustment shall be made for any excess out of service hours resulting from delaying action of Railroad or its representative. A penalty of $200 per day shall be paid for each day for each unit of Equipment which fails to meet this requirement during the initial warranty period of two years or 350,000 miles.

(b) **Repairs or Alterations.** The Builder's guarantee shall not apply to any unit of Equipment which shall have been repaired or altered in a manner which does not have the approval of the Builder. In the case of repairs made by the Builder or by his authorized representative his approval shall be implied.

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

(d) **Miscellaneous. There are no warranties with respect to material and workmanship, expressed or implied, made by the Builder except the warranties set out above.**

The Builder further agrees with the Railroad that neither the inspection as provided in Article 2 of the Agreement, nor any examination, nor the acceptance of any units of the Equipment as provided in said Article 2 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 1.

**Item 2.** Except to the extent the Builder is obligated under the Agreement to indemnify, protect and hold harmless each assignee of any of the rights of the Builder under the Agreement, the Rail-

road agrees to indemnify, protect and hold harmless such assignee from and against any and all liability, claims, demands, cost, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each such assignee because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.

The Builder shall defend any suit or proceeding brought against the Railroad, any assignee of 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 Builder's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Railroad, any assignee of the Railroad and/or any such assignee of the Builder.

In case any unit of the 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 and at its own expense either procure for the Railroad, any assignee of the Railroad, and any such assignee of the Builder the right to continue using such unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, 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 the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Article 7 of the Agreement and, to the extent such refund exceeds the Casualty Value, such excess shall be paid to the Railroad.

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

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

**AGREEMENT AND ASSIGNMENT** dated as of June 1, 1973, between GENERAL MOTORS CORPORATION (Electro-Motive Division) (hereinafter called the Builder), and CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO (hereinafter called the Assignee).

WHEREAS the Builder and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of June 1, 1973 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Conditional Sale Agreement;

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth: That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee, its successors and assigns:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad under the Conditional Sale Agreement, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof with respect thereto;

(b) all the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right to construct and deliver the Equipment and the right to receive the payments specified in the third paragraph of Article 2 thereof and in subparagraph (a) of the third paragraph of Article 3 thereof and the last paragraph of Article 14 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Article 4 thereof) and in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; *provided, however,* that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to construct and deliver the Equipment in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Article 13 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 1, 2, 3, 4, 12, 13 and 14 of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 14 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and the Railroad that at the time of delivery of each unit of the Equipment under the Conditional Sale Agreement it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the Conditional Sale Agreement; all *subject, however,* to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Article 18 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from the Railroad or special counsel for the Assignee that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the Conditional Sale Agreement for any instalment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Schedule B to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Assignee 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 Assignee or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the Conditional Sale Agreement or otherwise, not hereby assigned to the Assignee, shall not be secured by any lien, charge or security interest upon the Equipment or any unit thereof.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Article 3) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Article 3, is payable in instalments, provided that there shall have been delivered to the Assignee, as

provided in Article 14 of the Conditional Sale Agreement, at least five business days (as defined in said Article 3) prior to such Closing Date, the following documents, in form and substance satisfactory to it and to its special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) A bill of sale from the Builder to the Assignee and to the Railroad transferring to the Assignee security title, and to the Railroad legal title (subject to the security title of the Assignee), to the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the Conditional Sale Agreement the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the Conditional Sale Agreement;

(b) A Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 2 of the Conditional Sale Agreement;

(c) An invoice of the Builder for the units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units;

(d) An opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Assignee, dated as of such Closing Date, stating that (i) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (ii) this Assignment has been duly authorized, executed and delivered by the Builder and the Assignee and is a legal, valid and binding instrument, (iii) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Assignment, (iv) security title to the units of the Equipment in such Group is validly vested in the Assignee and such units, at the time of delivery thereof to the Railroad under the Conditional Sale Agreement, were free from all claims, liens, security interests and other encumbrances (other than those created by the Conditional Sale Agreement), (v) no approval of the Interstate Commerce Commission or any other Federal or District of Columbia governmental authority is necessary for the valid execution and delivery by the Railroad of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, (vi) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia, (vii) the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement) and interest thereon by the Railroad has been duly guaranteed by the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation pursuant to the Guaranty Agreement (hereinafter called the Government Guaranty), dated the date of execution and delivery of this Assignment, among the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation, the Railroad, Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and the Assignee under the provisions of the Rail Passenger Service Act of 1970, as amended, and the Government Guaranty has been duly executed and delivered and constitutes a valid, binding and enforceable general obligation of the United States of America backed by the full faith and credit of the Government of the United States and (viii) registration of the Conditional Sale Agreement and this Assignment is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee;

(e) An opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i) (insofar as it relates to the Railroad and then, as to enforceability, only under the laws of the District of Columbia), (v) and (vi) of subparagraph (d) above and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its properties and to carry on its business as now conducted, and that the Government Guaranty has been duly authorized, executed and delivered by the Railroad;

(f) An opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iii) and (iv) of subparagraph (d) above and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) the Conditional Sale Agreement has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms and (iii) this Assignment has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder;

(g) An opinion of counsel for the Department of Transportation, in form and substance satisfactory to the Assignee, to the effect set forth in clause (vii) of subparagraph (d) above;

(h) A receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Assignee with funds furnished to it for that purpose by the Railroad; and

(i) A duly executed copy of the Government Guaranty.

In giving the opinions specified in subparagraphs (d), (e) and (f) of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights. In giving the opinion specified in said subparagraph (d), counsel may rely, as to authorization, execution and delivery by the Builder of the documents executed by the Builder and title to the Equipment at the time of delivery thereof under the Conditional Sale Agreement, on the opinion of counsel for the Builder, as to any matter governed by the law of the District of Columbia on the opinion of counsel for the Railroad as to such matter, and, as to any matter governed by the laws of the State of Illinois on the opinion of Messrs. Mayer, Brown & Platt as to such matter.

The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (d) or (e) of Article 15 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Assignee shall not make any such payment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

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

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement bind-

ing upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

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

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

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; *provided, however*, that the parties shall be entitled to all rights conferred as provided in Article 21 of the Conditional Sale Agreement. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 8. This Assignment may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment 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.

IN WITNESS WHEREOF, the Builder and the Assignee have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

[CORPORATE SEAL]

GENERAL MOTORS CORPORATION
(Electro-Motive Division)

By_____
*Vice President*

Attest:

_____
*Assistant Secretary*

[CORPORATE SEAL]

CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO

By_____
*Vice President*

Attest:

_____
*Assistant Secretary*

**GUARANTY BY DEPARTMENT OF TRANSPORTATION**

The Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America does hereby guarantee to the Assignee named in the foregoing Agreement and Assignment the prompt payment of the unpaid Conditional Sale Indebtedness and interest thereon under the Conditional Sale Agreement referred to in said Agreement and Assignment pursuant to and in accordance with the Guaranty Agreement dated June , 1973 among the Federal Railroad Administrator of the Department of Transportation of the United States of America, as Guarantor, National Railroad Passenger Corporation, Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and said Assignee.

By_____
*Federal Railroad Administrator*
*Guarantor*

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this day of June, 1973, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of GENERAL MOTORS CORPORATION (Electro-Motive Division), that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Notary Public*

My Commission Expires:

STATE OF ILLINOIS }
COUNTY OF COOK } ss.:

On this day of June, 1973, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

*Notary Public*

My Commission Expires:

CITY OF WASHINGTON }
DISTRICT OF COLUMBIA } ss.:

On this day of June, 1973, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is the Deputy Federal Railroad Administrator, that one of the seals affixed to the foregoing instrument is the seal of the Federal Railroad Administration, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportation; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Deputy Federal Railroad Administrator.

[NOTARIAL SEAL]

*Notary Public*

My commission expires:

## ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

NATIONAL RAILROAD PASSENGER CORPORATION hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of June 1, 1973.

NATIONAL RAILROAD PASSENGER CORPORATION

By

*Vice President*

EXHIBIT E

AGREEMENT AND ASSIGNMENT dated as of _____ __, 197_, from _____ (hereinafter called the Assignor), to THE FEDERAL RAILROAD ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION OF THE UNITED STATES OF AMERICA (hereinafter called the Assignee).

WHEREAS GENERAL MOTORS CORPORATION (ELECTRO-MOTIVE DIVISION) and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of June 1, 1973 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Conditional Sale Agreement;

WHEREAS the Builder has assigned its right, title and interest in the Conditional Sale Agreement to Continental Illinois National Bank and Trust Company of Chicago pursuant to an Agreement and Assignment dated as of June 1, 1973[, and said Bank assigned its right, title and interest to the Assignor by an Agreement and Assignment dated as of _____ __, 19__, a copy of which has been delivered to the Assignee].*

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*To be included if there has been a subsequent assignment of the Conditional Sale Agreement.

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Assignor, the receipt of which is hereby acknowledged:

SECTION 1. The Assignor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns all the right, title and interest of the Assignor in and to each unit of the Equipment subject to the Conditional Sale Agreement, and in and to the Conditional Sale Agreement (except the rights reserved to the Lender, as defined in the Guaranty Agreement dated June ___, 1973 among the Assignee, the Railroad, Continental Illinois National Bank and Trust Company of Chicago, as Trustee, and Continental Illinois National Bank and Trust Company of Chicago, in its individual capacity, which are not conveyed hereby and are hereby expressly reserved to the Assignor), without any recourse, however, against the Assignor. In furtherance of the foregoing assignment and transfer, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled

under this Assignment and, except as hereinabove provided, compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Assignee may assign all or any of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 3. Although this Assignment is dated for convenience as of the date first set forth above, the actual date of execution hereof is the date stated in the acknowledgment hereto annexed.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed in its corporate name by its officer thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

_____

By_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

STATE OF _____ )
) SS:
COUNTY OF _____ )

On this day of _____, 19__, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a _____ of _____, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]

EXHIBIT F

AGREEMENT AND ASSIGNMENT dated _____, 197_, from CONTINENTAL ILLINOIS NATIONAL BANK AND TRUST COMPANY OF CHICAGO, as Trustee (hereinafter called the Assignor), to THE FEDERAL RAILROAD ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION OF THE UNITED STATES OF AMERICA (hereinafter called the Assignee).

WHEREAS, the Assignor and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into an Equipment Lease dated as of June 1, 1973 (hereinafter called the Lease), covering the leasing by the Assignor to the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Lease;

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the payment by the Assignee to the Assignor of the amount required to be paid by the Assignee to the Assignor under subsection 4(b) of the Guaranty Agreement (being the agreement defined as the Government Guaranty in the Lease), the receipt of which is hereby acknowledged:

SECTION 1. The Assignor hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right,

title and interest of the Assignor in and to each Item of the Equipment subject to the Lease, and in and to the Lease (except the Assignor's rights of indemnification contained in Sections 6 and 10.2 of the Lease, which are not conveyed hereby and are hereby expressly reserved to the Assignor), without any recourse, however, against the Assignor. In furtherance of the foregoing assignment and transfer, the Assignor hereby authorizes and empowers the Assignee, in the Assignee's own name, or in the name of the Assignee's nominee, or in the name of and as attorney hereby irrevocably constituted for the Assignor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and, except as hereinabove provided, compliance by the Railroad with the terms and agreements on its part to be performed under the Lease, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Assignee may assign all or any of its rights under the Lease, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 3. Although this Assignment is dated for convenience

as of the date first set forth above, the actual date of execution hereof is the date stated in the acknowledgment hereto annexed.

IN WITNESS WHEREOF, the Assignor has caused this instrument to be executed by its officer thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

CONTINENTAL ILLINOIS NATIONAL BANK
AND TRUST COMPANY OF CHICAGO,
as Trustee

By_____
Vice President

[Corporate Seal]

Attest:

_____
Secretary

STATE OF _____ )
) SS:
COUNTY OF _____ )

On this day of _____, 19__, before me personally appeared , to me personally known, who, being by me duly sworn, says that he is a Vice President of

Continental Illinois National Bank and Trust Company of Chicago, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

_____
Notary Public

[Notarial Seal]